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## Part III

### Department of Agriculture

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7 CFR Parts 1703, 1709, et al.

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Rural Business-Cooperative Service

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Environmental Policies and Procedures; Proposed Rule

**DEPARTMENT OF AGRICULTURE****Rural Utilities Service**

**7 CFR Parts 1703, 1709, 1710, 1717, 1720, 1721, 1724, 1726, 1737, 1738, 1739, 1740, 1753, 1774, 1775, 1779, 1780, 1781, and 1782**

**Rural Business-Cooperative Service****Rural Housing Service****Rural Utilities Service****Farm Service Agency**

**7 CFR Parts 1924, 1940, 1942, 1944, 1948, 1951, 1955, 1962, 1970, and 1980**

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**Rural Business-Cooperative Service****Rural Utilities Service**

**7 CFR Parts 4274, 4279, 4280, 4284, and 4290**

**RIN 0575-AC56**

**Environmental Policies and Procedures**

**AGENCY:** Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, U.S. Department of Agriculture (USDA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Rural Development, a mission area within the U.S. Department of Agriculture comprised of the Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS) and Rural Utilities Service (RUS), hereafter referred to as the Agency, is proposing to unify and update environmental policies and procedures covering all Agency programs by consolidating two existing Agency regulations that implement the National Environmental Policy Act (NEPA) and other applicable environmental requirements. These rules supplement the regulations of the Council on Environmental Quality (CEQ), the regulations of the Advisory Council on Historic Preservation (ACHP), associated environmental statutes, Executive orders and Departmental Regulations. The majority of the proposed changes relate to the categorical exclusion provisions in the Agency's procedures for implementing NEPA. These proposed changes are intended to better align the Agency's regulations, particularly for those

actions listed as categorical exclusions, to the Agency's current activities and recent experiences and to the CEQ's Memorandum for Heads of Federal Departments and Agencies entitled "Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act" issued on November 23, 2010, and to consolidate the provisions of the Agency's two current NEPA rules at 7 CFR parts 1794 and 1940, subpart G.

**DATES:** Comments on the proposed rule must be received on or before April 7, 2014. Comments on the reporting and recordkeeping aspects of this rule in accordance with the Paperwork Reduction Act of 1995 continue through April 7, 2014.

**ADDRESSES:** You may submit comments to this rule by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250-0742.

- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street SW., 7th Floor, Suite 701, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street SW., 7th Floor address listed above.

**FOR FURTHER INFORMATION CONTACT:** Mark S. Plank, Director, Environmental and Engineering Staff, Rural Utilities Service, Stop 1571, 1400 Independence Ave. SW., Washington, DC 20250-1571; email: [Mark.Plank@wdc.usda.gov](mailto:Mark.Plank@wdc.usda.gov); telephone: (202) 720-1649.

**SUPPLEMENTARY INFORMATION:****I. Introduction and Background**

This section describes NEPA requirements, including the different levels of environmental review, and a description of how the Agency makes a determination regarding the appropriate level of environmental review. It also describes the Agency's mission and its current NEPA-implementing regulations.

**A. National Environmental Policy Act**

NEPA (Pub. L. 91-190, 42 U.S.C. 4321-4370) establishes a national environmental policy to, among other

things, "create and maintain conditions under which man and nature can exist in productive harmony" (42 U.S.C. 4331(a)); sets goals for the protection, maintenance, and enhancement of the environment; and provides a process for carrying out the policy and working toward those goals. NEPA also created the Council on Environmental Quality (CEQ), which was later directed, by Executive order, to promulgate binding regulations to guide all Federal agencies in preparation of agency-specific regulations for implementing NEPA (Executive Order No. 11514, "Protection and Enhancement of Environmental Quality" [March 5, 1970], as amended by Executive Order No. 11991, "Relating to Protection and Enhancement of Environmental Quality" [May 24, 1977]). The CEQ regulations can be found at 40 CFR 1500-1508 and are referenced in this proposed rule.

As set forth in CEQ's NEPA-implementing regulations, the NEPA process requires different levels of environmental review and analysis of Federal agency actions, depending on the nature of the proposed action and the context in which it would occur. The three levels of analysis are: Categorical exclusion (CE), environmental assessment (EA), and environmental impact statement (EIS).

A CE is a category of actions that each Federal agency determines, by regulation, do not individually or cumulatively have a significant effect on the human environment (40 CFR 1508.4). The agency's procedures must provide for "extraordinary circumstances" in which a normally categorically excluded action may have a significant environmental effect. Examples of Agency CEs are routine financial transactions including, but not limited to, refinancing of debt; loans for purchase of real estate or equipment; and small-scale construction. Even if a proposed action is classified by an agency as a CE, such proposed action is still screened for any extraordinary circumstances that would indicate a potential to have significant impacts. If a CE applies, and there are no extraordinary circumstances, the Federal agency typically documents that determination in the project file. If, however, a CE applies and the agency determines that there are extraordinary circumstances, the agency would proceed to prepare an EA or an EIS.

An EA is prepared to determine whether the impacts of a particular proposal might be significant (40 CFR 1508.9). In an EA, a Federal agency briefly describes the need for the proposal, alternatives to the proposal, and the potential environmental

impacts of the proposed agency action and alternatives to that action, including the no action alternative. An EA results in either a Finding of No Significant Impact (FONSI) or a determination that the environmental impact may be significant and therefore an EIS is required.

A Federal agency is required to prepare an EIS for any major Federal action that may significantly affect the quality of the human environment (NEPA, 42 U.S.C. 4332(2)(C)). The EIS must include a detailed evaluation of: (1) The environmental impacts of the proposed action; (2) any adverse environmental effects that cannot be avoided; (3) alternatives to the proposed action; (4) the relationship between local, short-term resource uses and the maintenance and enhancement of long-term ecosystem productivity; and (5) any irreversible and irretrievable commitments of resources. NEPA requires that this evaluation be started once a proposal is concrete enough to warrant analysis and must be completed at the earliest possible time to ensure that planning and implementation decisions reflect the consideration of environmental values.

#### *B. Agency's Mission*

By statutory authority, the Agency is the leading Federal advocate for rural America, administering a multitude of programs, ranging from housing and community facilities to infrastructure and business development. Its mission is to increase economic opportunity and improve the quality of life in rural communities by providing the leadership, infrastructure, venture capital, and technical support that enables rural communities to prosper. The Agency supports these communities in a dynamic global environment defined by the Internet revolution, and the rise of new technologies, products, and new markets.

To achieve its mission, the Agency provides financial support (including direct loans, grants, and loan guarantees) and technical assistance to help enhance the quality of life and provide the foundation for economic development in rural areas. Like all Federal agencies, the Agency is responsible for determining the appropriate level of review for every proposed action. As part of the Agency's environmental review responsibilities under NEPA, the Agency's responsible official examines an individual proposed action to determine whether it qualifies for a CE under the Agency's NEPA regulations. The Agency's process is consistent with that described in

guidance issued by CEQ on establishing, applying, and revising CEs ("Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act" (CEQ CE Guidance)(75 FR 75628 (2010)). This guidance states:

"When determining whether to use a categorical exclusion for a proposed activity, a Federal agency must carefully review the description of the proposed action to ensure that it fits within the category of actions described in the categorical exclusion. Next, the agency must consider the specific circumstances associated with the proposed activity, to rule out any extraordinary circumstances that might give rise to significant environmental effects requiring further analysis and documentation" in an EA or EIS (75 FR at 75631).

The Agency's existing and proposed regulations ensure that the Agency's responsible official follows the steps described by CEQ for determining whether a CE for a particular proposed action exists. The Agency requires applicants to describe their proposals in sufficient detail to enable the Agency to determine the required level of NEPA review. If the proposed action does not fall within an established CE or if there are extraordinary circumstances, the Agency's responsible official then determines if the action is one that normally requires the preparation of an EA or EIS. Those types of actions are specified in the Agency's existing and proposed regulations.

If a proposed action, which is not a CE, does not normally require the preparation of an EIS, the Agency's responsible official will proceed to prepare an EA to determine if the potential environmental impacts of the proposed action may be significant. If the Agency concludes, based on the EA, that the impacts would not be significant, the Agency will prepare and issue a FONSI. If, however, the Agency concludes that the impacts may be significant, the Agency's responsible official will proceed to issue a notice of intent to prepare an EIS.

The Agency's procedures for determining whether to apply a CE or to prepare an EA or EIS and the manner in which those determinations are documented are set forth in the Agency's existing and proposed NEPA regulations.

To achieve the Agency's mission and to improve the delivery of its programs, the Agency intends to consolidate and update the existing environmental regulations to eliminate confusion between the two existing NEPA regulations and to facilitate NEPA reviews.

#### *C. Current Agency NEPA Regulations*

Each Federal agency's NEPA implementing procedures are specific to the actions taken by that agency and supplement the CEQ regulations (40 CFR 1507.3). Both RHS/RBS and RUS have promulgated Agency NEPA regulations. The Agency also completes various other review requirements for its programs under the umbrella of NEPA, including historic preservation reviews under 16 U.S.C. 470f of the National Historic Preservation Act, and consultation on federally-listed species under 16 U.S.C. 1536 of the Endangered Species Act.

The environmental policies and procedures currently utilized by RHS and RBS to implement NEPA were published as a final rule by the Farmers Home Administration (FmHA) on January 30, 1984 (7 CFR part 1940, subpart G, 49 FR 3724) and were amended on September 19, 1988 (53 FR 36266). RHS and RBS are successor agencies to FmHA, which ceased to exist on October 20, 1994, pursuant to The Agricultural Reorganization Act of 1994 (Pub. L. 103-354). Also pursuant to this Act, the farm programs under FmHA were transferred to the Farm Service Agency (FSA) that was established by the 1994 USDA reorganization.

RUS was established as part of the same 1994 USDA reorganization that established RHS and RBS, and is comprised of Rural Electrification Administration (REA) programs combined with the Water and Waste Program from the former FmHA. The environmental policies and procedures currently applicable to RUS programs were published as a final rule on March 13, 1984, by the REA (7 CFR part 1794, 49 FR 9544), were revised and published as a final rule in 1998 (63 FR 68648) to accommodate the 1994 USDA reorganization, and have been amended through 2003 (68 FR 45157).

The Agency's existing regulations for implementing NEPA need to be updated to reflect the Agency's current structure and programs, CEQ guidance documents, and Executive orders. In addition, the Agency proposes to consolidate the Agency's approach to environmental reviews for all assistance programs within the USDA Rural Development mission area, rather than having separate NEPA procedures for RHS/RBS and RUS.

Under the proposed rule, 7 CFR part 1970 will replace 7 CFR part 1794 for RUS and 7 CFR part 1940, subpart G, for RBS and RHS. While 7 CFR part 1940, subpart G, will no longer apply to RHS

and RBS, it will continue to apply to FSA.

## II. Purpose of the Proposed Agency NEPA Regulations

Under 7 CFR part 1970, subparts A through D, the Agency proposes to consolidate, simplify, and update the two existing NEPA rules. Although some substantive policy changes are being proposed to reflect recent environmental policies of Executive Orders and CEQ guidance, the Agency's main goal is to update and merge the two sets of existing regulations, rather than to promulgate new rules or requirements. The Agency believes that a consolidated environmental rule will be easier to read, understand, and use. In preparing the consolidated rule, the Agency sought to combine the requirements from both 7 CFR part 1940, subpart G, and 7 CFR part 1794 to eliminate redundancy; promote consistency among the RHS, RBS, and RUS programs; and reduce confusion on the part of applicants for Agency financial assistance and the public.

The proposed changes are intended to (1) better align the Agency's regulations with the CEQ NEPA regulations and recent guidance, and (2) update the provisions with respect to current technologies (e.g., renewable energy) and new and recent regulatory requirements.

The proposed consolidation encompasses the CEs currently in 7 CFR part 1940, subpart G, and in 7 CFR part 1794. In addition, the Agency is proposing to modify and add to its list of CEs in a manner consistent with CEQ regulations and guidance. CEQ encourages the development and use of CEs and has identified them as an "essential tool" in facilitating NEPA implementation so that more resource-intensive EAs and EISs can be "targeted toward proposed actions that truly have the potential to cause significant environmental impacts." (CEQ CE Guidance, 75 FR at 75631). Appropriate reliance on CEs provides a reasonable, proportionate, and effective analysis for many proposed actions, thereby helping agencies reduce paperwork (40 CFR 1508.4) and delay (40 CFR 1508.5).

## III. Invitation To Comment

The Agency encourages interested persons and organizations to submit written comments, which may include data, suggestions, or opinions. Commenters should include their name, address, and other appropriate contact information. Comments may be submitted by any of the means identified under **ADDRESSES**. Comments submitted by mail or hand delivery

should be submitted in an unbound format, no larger than letter-size, suitable for copying and electronic filing. If confirmation of receipt is requested, a stamped, self-addressed, postcard or envelope should be enclosed. The Agency will consider all comments received during the comment period and will address comments in the preamble to the final regulation. Tribal consultation will be conducted during the public comment period for the proposed rule.

## IV. Description of the Proposed Changes to the Agency's NEPA Regulations

The Agency is proposing both organizational and substantive changes to its NEPA-implementing regulations. These changes are described below. A section-by-section analysis of individual changes is provided in Section V.

### A. Organizational Changes

Consolidation of the Agency's two existing rules for implementing the procedural provisions of NEPA and other applicable environmental requirements will simplify program application processes for applicants by making environmental requirements more clear and consistent across all programs.

In addition, under the proposed rule, NEPA procedures have been reorganized and revised to simplify provisions, as well as to provide more concise and comprehensive discussions of specific topics. In some cases, detail was removed because it relates primarily to internal Agency processes and thus is more appropriately addressed in staff instruction for Agency personnel or in separate guidance to applicants. For example, the Agency proposes to eliminate Exhibits A–M in 7 CFR part 1940, subpart G because these exhibits are internal guidance.

In other instances, additional clarification and detail were added to ensure consistency in NEPA compliance and implementation across all Agency programs. For example, additional detail was added to discussions of applicant responsibilities, definitions, actions subject to NEPA, limitations on actions during the NEPA process, scoping, public notices, and interagency cooperation.

The proposed NEPA regulations, which are intended to supplement the CEQ regulations, are organized into four subparts as described below:

**Subpart A—Environmental Policies.** This subpart contains the environmental policies and procedures of the Agency that integrate NEPA, as amended, with the planning, environmental review

processes, and consultation procedures required by the environmental statutes, regulations, and Executive orders applicable to Agency programs.

**Subpart B—NEPA Categorical Exclusions (CE).** This subpart contains the descriptions of those categories of actions that the Agency has determined do not individually or cumulatively have a significant effect on the human environment. In consolidating and reorganizing the proposed CEs, the Agency grouped them by activity (e.g., routine financial actions) rather than by particular Agency program (e.g., Water and Waste or Community Facilities). The Agency took this approach to make clear that all CEs are applicable to each of the 86 programs the Agency currently administers, as long as the conditions within the CE are met and there are no extraordinary circumstances.

**Subpart C—NEPA Environmental Assessments (EA).** This subpart describes actions that require the preparation of an EA to determine whether the impacts of a proposed action may be significant and thus whether preparation of an EIS is warranted. It also describes the requisite components of an EA and FONSI, and includes a provision on supplementing an EA.

**Subpart D—NEPA Environmental Impact Statements (EIS).** This subpart describes actions for which the Agency will prepare an EIS. It also describes the contents of an EIS and a Record of Decision (ROD), which is the last step in the EIS process.

### B. Substantive Changes

The Agency is also proposing consolidation of and substantive changes to its CEs, classification criteria and procedures for preparing EAs, and the preparation of EISs by third-party contractors. These proposed changes are described below.

#### 1. Categorical Exclusions

The Agency is proposing to modify and add a number of CEs. In addition to combining the existing RHS/RBS and RUS CEs, the Agency is proposing some revisions to the existing CEs and is proposing new CEs. Further, the Agency recognizes that some CEs have a potential for significant environmental impacts because of the possible presence of extraordinary circumstances, such as sensitive environmental resources. For these CEs, the Agency is proposing to require applicants to submit environmental documentation regarding their requests for financial assistance. Finally, the Agency is proposing to add several CEs based on the experience of the Agency

and, in accordance with 40 CFR 1507.3(a), other Federal agencies with similar programs.

In addition to modifying existing CEs and adding new CEs, the Agency is proposing to eliminate several CEs currently listed in the RHS/RBS and RUS NEPA regulations because the Agency no longer undertakes those types of actions as a result of the 1994 USDA reorganization. These proposed modifications are described in more detail below. The section-by-section analysis in Section V.B describes the basis for each proposed CE as well as for the elimination of some CEs, currently specified in either 7 CFR part 1794 or 7 CFR part 1940, subpart G.

a. *New and Revised CEs.* Most of the proposed CEs are found in the existing Agency NEPA regulations. However, the Agency is proposing to revise the language of some existing CEs to reflect current agency programs. These revisions clarify, and in some instances, expand the applicability of the CEs and make the scope and quantitative aspects of the CEs more consistent with those adopted by other Federal agencies engaged in similar or identical actions. Such expansion includes the reclassification of Class I EAs, currently provided for in the existing RHS and RBS regulations as EAs for actions with low potential to effect environmental quality (7 CFR 1940.311), as CEs. Based on the EAs and FONSI's that have been prepared for these actions since 1984, the Agency has concluded that these types of activities, absent the presence of extraordinary circumstances, do not individually or cumulatively have significant environmental effects and thus are more appropriately classified as CEs.

In addition, the Agency is proposing new CEs to address Agency programs that have been enacted since the existing NEPA regulations were last updated. The range of Agency activities and programs has changed and expanded since the Agency's NEPA regulations were promulgated and later amended, growing to more than 86 programs in 2012.

In particular, there has been tremendous growth and development in the areas of energy efficiency and renewable energy. Over the last several years, this growth has given the Agency and other Federal agencies (e.g., the Department of Energy (DOE)), extensive experience with assessing the potential environmental impacts of these technologies. With the increase in development of energy efficiency and renewable energy, has come an increase in the number of applications to the Agency for financial assistance to

promote energy efficiency and alternative energy development.

The Agency's proposal to add CEs based on the Agency's own experience as well as that of other Federal agencies is consistent with the CEQ CE Guidance. As CEQ noted in that guidance, a Federal agency may "substantiate a categorical exclusion of its own based on another agency's experience with a comparable categorical exclusion and the administrative record developed when the other agency's categorical exclusion was established" (CEQ CE Guidance, 75 FR at 75634). For several of the new CEs being proposed by the Agency, the Agency is relying on DOE's extensive experience with energy projects, which DOE has used in recent revisions to its own NEPA rule (76 FR 63764 (2011)). DOE's revised NEPA rule included several modifications and additions to its CEs, particularly relating to energy efficiency and renewable energy technologies. The Agency has reviewed DOE's CEs and the basis for those CEs, and has determined that many DOE actions eligible for a CE are comparable to actions undertaken by the Agency.

In the text of the proposed CEs, and as is done in the CEs in its existing regulations, the Agency uses the terms "small," "small-scale," "minimal," and "minor" to limit the types and potential impacts of the activities that are eligible for a CE. While the Agency does not intend to define these terms specifically, in determining whether a particular proposed action qualifies for a CE, the Agency considers those terms in the context of a particular proposal, including its proposed size and location.

In assessing whether these terms apply to a particular proposed action, the Agency currently considers and would continue to consider factors such as industry norms, the relationship of the proposed action to similar types of development in the vicinity of the proposed action, and expected outputs of emissions or waste, in addition to the magnitude of the proposal. When considering the physical size of a proposed facility, for example, Agency environmental staff reviews the surrounding land uses, the scale of the proposed facility relative to existing development, and the capacity of existing roads and other infrastructure to support the proposed action. This approach is similar to and consistent with that undertaken by DOE in the application of its CEs, as described in its recent NEPA rulemaking (76 FR 63764, 63768 (2011)).

The proposed rule also uses the term "previously disturbed or developed" to

limit potential environmental impacts of CEs. The Agency has determined, based on experience, that the potential for certain actions to have significant impacts on the human environment is generally avoided when the action takes place within a previously disturbed or previously developed area. "Previously disturbed or developed" refers to land that has been changed such that its functioning ecological processes have been and remain altered by human activity. The phrase encompasses areas that have been transformed from natural cover to non-native species or a managed state, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available. This approach is similar to and consistent with that undertaken by DOE in the application of its CEs, as described in its recent NEPA rulemaking (76 FR 63764, 63768 (2011)).

For some proposed CEs, the Agency proposes the use of quantitative limitations or thresholds (acres, miles, feet, megawatts, kilovolts) to help further limit the potential for significant environmental impacts. These threshold values are based on the Agency's past experience in applying its existing CEs and preparing EAs that resulted in FONSI's, where actual project sizes could be correlated to impacts. The Agency's experience has shown that the proposal size is directly linked to impacts, where the greater the potential area affected, the greater the potential for significant impacts. In many cases, the threshold values are the same as those used in the existing Agency NEPA regulations. In other instances, however, changes in thresholds have been proposed to promote consistency among Agency programs and with the environmental requirements of other Federal agencies' programs that are similar in nature.

The Agency has reviewed and deliberated each proposed CE with respect to concept, coverage, applicability, and wording; and carefully examined the portion of the administrative record associated with each CE to ensure that the proposed CE fulfills the goal of balancing increased administrative efficiency with the avoidance of misinterpretations and misapplications of exclusionary language that could lead to non-compliance with NEPA requirements. The Agency has concluded that the proposed CEs encompass activities that have no inherent potential for significant impacts. Many of the Agency's conclusions regarding specific categorical exclusions are supported by

other Federal agencies that have established CEs for activities similar in nature, scope, and impact to those contemplated by the Agency. Based on the Agency's experience and that of other Federal agencies, the Agency determined that, in the absence of extraordinary circumstances, its proposed CEs will not individually or cumulatively pose significant environmental impacts.

*b. Documentation Requirements.* The Agency's proposed CEs are divided into two sections. The proposed CEs in § 1970.53 involve no or minimal construction and generally involve routine financial actions, information gathering activities, or modifications to existing facilities. For that reason, these CEs, due to their narrow scope, do not have the potential for extraordinary circumstances. Therefore, the CEs listed in proposed § 1970.53 would not require applicants to provide environmental documentation with their applications. Nonetheless, applicants may be required to provide environmental documentation at the Agency's request.

The CEs listed in proposed § 1970.54 would require applicants to submit environmental documentation with their applications for financial assistance. In the Agency's view, these proposed CEs involving small-scale development have an increased potential for disturbance of sensitive resources. Thus, the Agency proposes to require applicants to submit information regarding their proposals, including detailed site plans, location maps, and environmental surveys, to allow the Agency to determine whether there could be extraordinary circumstances.

An environmental report is currently required for CEs listed in RUS's NEPA regulation at 7 CFR 1794.22. Not all of those existing CEs would require documentation under the Agency's proposed NEPA rule, based on the Agency's conclusion that, for certain actions, environmental documentation is not necessary because of the low probability for extraordinary circumstances.

However, the Agency also concluded that some CEs that do not currently require an environmental report under the existing regulations at 7 CFR 1794.21 do have the potential for extraordinary circumstances. Thus, under the proposed rule, those proposed actions would require an applicant to submit environmental documentation. It should be noted that the environmental documentation required for CEs proposed in § 1970.54 is less than the information currently required for an environmental report (see 7 CFR 1794.32; RUS Bulletins 1794A-600 and

1794A-602). For those RHS and RBS Class I EA actions that are now proposed as CEs under part 1970, the documentation requirements would be similar to that provided in the RD 1940-20 form currently required under § 1940.311.

Differences between the existing and proposed CEs are addressed in more detail in the section-by-section analysis in Section V.B.

*c. Multi-Tier Actions.* Subpart B also provides that the Agency's approval of the initial funding to multi-tier entities (primary recipients) would be classified as CEs. Commitments of financial assistance to primary recipients who will, in turn, provide financial assistance in the future to qualified second tier or ultimate recipients under certain terms and conditions (§ 1970.55) would be subject to further environmental review by the Agency. The Agency will conduct its review in accordance with this part and on a case-by-case basis at the time when projects and ultimate beneficiaries are defined.

*d. Eliminated CEs.* The Agency is proposing to remove several types of actions from its list of CEs. Most of these relate to programs that are no longer under the purview of the Agency, except as noted below:

The following existing CEs involving subdivisions are being eliminated:

- § 1940.310(b)(2) The approval of an individual building lot that is located on a scattered site and either not part of a subdivision or within a subdivision not requiring Rural Development's approval
- § 1940.310(b)(5) The approval of a subdivision that consists of four or fewer lots and is not part of, or associated with, building lots or subdivisions
- § 1940.310(b)(8) The financing of housing construction or the approval of lots in a previously approved Rural Development subdivision. Please note that the financing of the housing construction portion of this CE has been incorporated into § 1970.53(c)(4).

The Agency proposes to eliminate §§ 1940.310(c)(3) and 1794.21(c)(1), which refer to project management actions relating to invitation for bids, contract award, and the actual physical commencement of construction activities. These actions occur after the Agency has completed the NEPA process and has obligated funds for the project. Thus, these actions would have already been addressed as part of the request for financial assistance, and a separate section is not necessary.

The Agency also proposes to eliminate §§ 1940.310(d)(1) through 1940.310(d)(11), which are programs

administered by FSA and are not eligible for Agency financing.

Finally, the Agency proposes to eliminate § 1794.22(b)(6), which refers to previously categorically excluded loan closing and servicing activities for which the purpose, operation, location, or design may have changed. The Agency recognizes that a previously approved action that is later altered would need to be re-examined to determine if the original application of the CE was still appropriate given the change in purpose, operation, location, or design. If the CE was no longer appropriate, the Agency would proceed to prepare an EA, or if necessary, an EIS.

All other CEs that are currently contained in 7 CFR parts 1940, subpart G, and 1794 are proposed for inclusion in the proposed CEs in § 1970.53 or 1970.54. For example, § 1794.21(b)(26), which refers to "New bulk commodity storage and associated handling facilities within existing fossil-fueled generating station boundaries for the purpose of co-firing bio-fuels and refuse derived fuels" is now included in proposed § 1970.54(a), "Small-scale site-specific development," as long as the conditions of the CE are met and there are no extraordinary circumstances. For proposed § 1970.54(a) in particular, the Agency intends that proposals for financial assistance that fall within the stated parameters of the CE be eligible for a CE even though the proposed action may not be specifically listed as an example.

## 2. EA Policy

The Agency is proposing to eliminate the distinction in the RHS/RBS regulations for Class I and Class II EAs and the distinction in the RUS regulations for EAs with and without scoping. The Agency is also proposing to provide a formal process for the public review of EAs. These changes are described below.

*a. Elimination of EA Categories.* In the existing regulations, RHS and RBS distinguish between Class I and Class II EAs. Class I EAs are defined as those actions that are not listed as CEs and that require the preparation of an EA to determine if the proposal will have a significant impact on the environment (7 CFR 1940.311). Class II EAs "have the potential for resulting in more varied and substantial environmental impacts" and thus require a "more detailed" EA to determine if the proposed action requires the preparation of an EIS (7 CFR 1940.312). Further, RUS lists proposed actions that will normally require an EA (7 CFR 1794.23) and separately lists proposed actions that

require a “scoping procedure” in the development of the EA (7 CFR 1794.24).

To simplify its EA process and to make its NEPA regulations consistent with the CEQ regulations (which do not recognize different EA classifications), the Agency is proposing to eliminate these two EA classes. Under the proposed rule, the Agency would prepare EAs for all forms of financial assistance unless such actions are CEs or require the preparation of an EIS (proposed § 1970.101(b)). The proposed rule recognizes, however, that “the amount of information and level of analysis provided in the EA must be commensurate with the magnitude of the proposal’s activities and its potential to affect the quality of the human environment” (proposed § 1970.102(a)).

As described more fully in the section-by-section analysis in Section V.C, several actions that were previously Class I EAs in the RHS and RBS regulations are now proposed as CEs because the Agency has concluded that those types of actions do not have the potential for imposing significant environmental impacts. All but one of these actions would require the applicant to submit environmental documentation to determine the presence or absence of extraordinary circumstances. Other actions that fall under the Class I EA classification would be eliminated because those actions are no longer undertaken by the Agency (i.e., the actions now fall under FSA’s jurisdiction).

Under the existing regulations, at the discretion of the Agency, the Agency may require scoping meetings depending on the complexity of the proposal. The Agency is now proposing to remove the distinction between proposals normally requiring an EA and those requiring an EA with scoping. This does not represent a change in procedure, but continues to allow the Agency to exercise its discretion. Accordingly, the Agency determined that a separate classification is not necessary.

Except for proposals including electric transmission facilities of 230 kV or more nominal operating voltage and 20 miles or more in length, the remainder of the actions specifically listed in § 1940.311 and § 1940.312 (for RHS and RBS) and in § 1794.23 and § 1794.24 (for RUS) would require the preparation of an EA under the proposed NEPA rule. While the existing regulations define the specific proposals that require the preparation of an EA, the proposed rule simply states that all forms of financial assistance require the preparation of an EA unless they are categorically excluded or required to be

the subject of an EIS. In light of the large number and varying types of programs implemented by the Agency, the proposed generic approach provides assurance that EAs will be prepared for proposals that may not have been previously encountered by the Agency and for future Agency programs.

*b. Public Review of EAs.* The Agency is proposing to establish a formal EA public notice and participation process that is consistent with the CEQ regulations and the existing part 1794, recent case law, and other Federal agencies’ requirements for EAs. The Agency’s proposed procedures would require EAs to be made available for public review and comment prior to completion and issuance of a FONSI, if the Agency determines that on the basis of the EA there are no significant impacts. Although the CEQ regulations require agencies to involve the public in the preparation of EAs “to the extent practicable” (40 CFR 1501.4(b)), there is no formal commenting requirement in those regulations. Federal agencies have typically declined to implement a public review and comment process similar to that required for EISs. Recently, however, courts have held that Federal agencies must permit some level of public participation when issuing an EA. Specifically, courts have held that a complete failure to involve or inform the public about an agency’s preparation of an EA would violate NEPA. *See, e.g., California Trout v. Federal Energy Regulatory Commission*, 572 F.3d 1003 (9th Cir. 2009).

In keeping with the spirit of NEPA and the CEQ regulations and to follow the dictates of case law, the Agency is proposing a formal commenting process for EAs similar to that which is currently required under part 1794. This process would involve notification of the availability of an EA and the establishment of a 14- to 30-day public comment period. DOE has a similar provision in its NEPA regulations (10 CFR 1021.301(d)).

### 3. Third-Party Contracting

The Agency is proposing to improve efficiency in the NEPA process by revising the manner in which professional services of contractors to support the preparation of an EIS are procured. Under the proposed rule, applicants for financial assistance under all Agency programs would be required to fund EISs. In accordance with the CEQ regulations, applicants may undertake the necessary paperwork for the solicitation of a field of candidates under the Agency’s direction and the Agency would select and approve all contractors (see proposed § 1970.152).

Although funding for an EIS by applicants is currently allowed under § 1794.61, there is no similar provision in 7 CFR part 1940, subpart G. The proposed rule would allow all Agency programs to use a third-party contracting approach for the preparation of EISs.

Third-party contracting offers a more efficient approach for the preparation of an EIS, however it does not change current Agency responsibilities. The Agency would also remain responsible for: Selecting the EIS contractor; participating in the preparation of the EIS; and independently evaluating the scope and content of the EIS. This action is proposed to improve both the efficiency and the effectiveness of the Agency’s environmental review processes and represents an important contribution to the Agency’s ongoing efforts to streamline its operations.

## V. Section-by-Section Analysis of the Proposed Agency NEPA Regulation

This section provides a detailed discussion of the proposed Agency NEPA regulation. For each section, the content of the proposed rule is briefly described. The Agency then discusses the manner in which the proposed rule relates to existing Agency NEPA regulations in part 1970, subpart G, and/or in part 1794. In most cases, the proposed rule is the same as an existing regulation or has been modified slightly for clarity or consistency between the RHS/RBS and RUS NEPA regulations. Where the Agency proposes substantive changes to its NEPA regulations, an explanation for the change is provided.

### A. Subpart A—Environmental Policies

#### Purpose, Applicability, and Scope (§ 1970.1)

This proposed section describes the purpose of the Agency’s environmental policies and procedures, which is to ensure compliance with NEPA and other applicable environmental requirements. It also explains that the Agency’s environmental policies and procedures supplement the CEQ NEPA regulations (40 CFR parts 1500 through 1508).

This proposed section is similar to the information found in §§ 1940.301 and 1794.1 (Purpose); however, it has now been consolidated and reorganized into three separate paragraphs relating to purpose, applicability, and scope. The applicability paragraph is new and clarifies that the proposed rule applies to all Agency programs (RHS, RBS, and RUS). It also expands the existing discussion of scope to indicate that the Agency will take into account CEQ’s

guidance and memoranda interpreting NEPA to the extent appropriate. In addition, this section incorporates and is in conformity with the procedures of Section 106 of the National Historic Preservation Act (NHPA) and Section 7 of the Endangered Species Act (ESA).

Some information in the existing regulations has been reorganized. Specifically, information relating to authorities, previously contained in § 1940.301(c), has been moved to proposed § 1970.3 (Authority). Information contained in § 1940.301(d) through (h), which covered a variety of topics (e.g., objectives and coordination with other agencies, responsible officials, covered actions, completion of an environmental review, and public involvement), are now captured elsewhere in the proposed rule, including: §§ 1970.4 (Policies), 1970.5 (Responsible Parties), 1970.8 (Actions Requiring Environmental Review), 1970.11 (Timing of the Environmental Review), and 1970.14 (Public Involvement).

By consolidating the requirements found in the existing regulations, this proposed section helps provide for a single, consistent, streamlined process that all Agency programs will follow in complying with NEPA and other applicable environmental requirements. NHPA and ESA are now specifically referenced because these are important environmental reviews the Agency completes for its programs under the umbrella of NEPA.

#### Authority (§ 1970.3)

This proposed section describes the many environmental laws, regulations, Executive orders, and USDA regulations that comprise the authority for the proposed 7 CFR part 1970. The list of authorities includes those found in the existing regulations (§§ 1940.301(c) and 1794.2), and has been updated and expanded to reflect new requirements that have been enacted since the existing regulations were published. These include new statutes, Executive Orders, Departmental regulations and a Departmental manual. In addition, two statutes referenced in § 1940.301(c) are not proposed for inclusion in the proposed rule because they are only applicable to the FSA, which is no longer part of the Agency. The implementing regulations of those two statutes are: Title 7, Part 658, Code of Federal Regulations, Department of Agriculture, Soil Conservation Service, Farmland Protection Policy; and Title 7, part 12, Code of Federal Regulations, Highly Erodible Land and Wetland Conservation.

#### Policies (§ 1970.4)

This proposed section states that it is Agency policy that applicant proposals must, whenever practicable, avoid or minimize adverse environmental impacts, conversion of wetlands and important farmlands, and development in floodplains where a practicable alternative<sup>1</sup> exists to meet development needs. Further, it is Agency policy to encourage reuse of real property defined as “brownfields” where possible; lend support to initiatives, resolutions, and programs designed to maximize international cooperation in addressing environmental problems; and consider opportunities to reduce greenhouse gas emissions. This proposed section is a consolidation of §§ 1940.303 (General policy) relating to the Agency decision-making process and the need to consider environmental impacts and alternatives early in the process; 1940.304 (Special policy) including special policies relating to land use and sensitive environmental resources; and 1940.305 (Policy implementation) relating to Agency responsibilities for environmental impact analysis, natural resource management, intergovernmental initiatives, and other protected resources. There is no analogous section in part 1794. The proposed section has also been updated to reflect new USDA policies, such as using the NEPA process, to the extent possible, to identify and encourage opportunities to reduce greenhouse gas emissions.

#### Responsible Parties (§ 1970.5)

This proposed section describes the responsibilities of the Agency and applicants. The Agency is responsible for all environmental decisions and findings related to its actions, and for compliance with all environmental laws, regulations, and Executive orders. The Agency responsibilities described are consistent with those identified in the CEQ regulations at 40 CFR 1506.5 (Agency responsibility).

With respect to the Agency’s responsibilities, this proposed section is similar to § 1794.5 relating to the Agency’s responsibility to comply with all environmental laws and Agency programs. It also includes the general Agency responsibilities found in 7 CFR part 1940, subpart G, but does not include most of the specific descriptions of Agency responsibilities found in §§ 1940.306 (National Office), 1940.307 (State Office), 1940.308 (District and

County Office levels), and 1940.316, describing the duties of responsible officials specific to the environmental review process. These provisions were eliminated because the information concerns internal agency policy and procedures.

In addition, the proposed section highlights specific Agency responsibilities relating to mitigation measures. While these are not new to Agency NEPA practices, they are more clearly described in the proposed rule in order to be consistent with CEQ regulations and provide clarity to applicants and Agency staff. These responsibilities are consistent with the CEQ regulations (40 CFR 1505.2(c) and 1505.3) and with recent CEQ guidance on mitigation and monitoring (Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact, 76 FR 3843 (2010)). In particular, the proposed rule makes it clear that the Agency will include mitigation measures, as identified in the environmental review documentation, in Agency loan and grant commitment documents and that the Agency, guaranteed lender, or multi-tier primary recipients are responsible for monitoring and tracking the implementation, maintenance, and effectiveness of any required mitigation measures.

Provisions relating to the Agency’s responsibility as a lead or cooperating agency are currently found in §§ 1940.325 (relating to being a cooperating agency), 1940.326 (related to being a lead agency), and 1794.14 (related to interagency involvement). Rather than repeating the CEQ regulations with regard to the definition and role of lead and cooperating agencies, however, the Agency proposes to simply reference the CEQ regulations in the proposed rule.

With respect to applicant responsibilities, most of the provisions in §§ 1940.309 and 1794.10 relating to an applicant’s responsibility to prepare applicable environmental documentation are included in this proposed section. The Agency also proposes two additions. First, the Agency proposes to specify when it is appropriate for an applicant to coordinate and consult with state, Federal, and tribal agencies under Section 106 of NHPA. The circumstances in which an applicant may contact state, Federal, and tribal agencies directly is not addressed in the existing regulations and has been the

<sup>1</sup> “Practicable alternative” is the term used in Executive order 11988, Floodplain Management. NEPA requires consideration of “reasonable” alternatives in EAs and EISs.



source of some confusion among Agency staff and applicants.

In this section, the Agency also proposes to provide additional detail on and clarification of applicant's responsibilities relating to the type and adequacy of environmental information that must be submitted to the Agency in support of a request for financial assistance (e.g., environmental review information, supporting technical studies, or an EA). Reference to Agency forms (Request for Environmental Information) included in § 1940.309 has been eliminated because they will no longer be used.

The proposed section also describes the obligation of an applicant to assist the Agency in preparing an EIS such as conducting public involvement activities, issuing notices, and funding third-party contractors. Finally, this proposed section specifies that the Agency's consideration of a request for financial assistance may be affected by the applicant's willingness to cooperate with the Agency on environmental compliance.

#### Definitions and Acronyms (§ 1970.6)

This proposed section includes many, but not all, of the definitions found in the existing regulations at §§ 1940.302 and 1794.6. A list of acronyms relevant to the environmental review process within the Agency is also proposed to aid readers.

The existing regulations include some defined terms that have not been included in the proposed regulation because they are specific to only one Agency program, are no longer needed or used, are not directly related to the environmental review process, and/or are already defined in the CEQ regulations. The following terms defined in the existing regulations are not included in the proposed regulation:

- From 7 CFR 1940.302—  
“environmental review documents” (refers to Agency forms no longer used), “flood/flooding,” (specific to one resource and better suited to staff instruction and/or applicant guidance), “floodplains” (critical action floodplain component is proposed for inclusion in the critical action definition), “indirect impacts” (defined in CEQ regulations under “effects” in 40 CFR 1508.8), “mitigation measure” (defined in CEQ regulations under “mitigation” in 40 CFR § 1508.20), “practicable” alternative (to be consistent with CEQ regulations that address “reasonable” alternatives at § 1502.14), “preparer of environmental review documents” (proposed for inclusion in staff instruction), and “water resource project” (specific to one program).

- From 7 CFR 1794.6—  
“Environmental Report,” “equivalent dwelling unit,” “important land resources,” “load design,” “multiplexing center,” “Natural Resource Management Guide,” “Supervisory Control and Data Acquisition System,” and “Third-Party Consultant.” “Third-party consultant” is addressed under third-party contracting in proposed §§ 1970.5, 1970.11, and 1970.152. The rest of the terms are specific to RUS programs and, in some instances, refer to internal documents (Environmental Reports and Natural Resource Management Guides) that are not referenced in the proposed regulations. Such terms are better placed in staff instruction and/or applicant guidance.

The following definitions have been retained in the proposed rule, although some have been modified for additional clarification or to ensure applicability to all Agency programs. These are: “Emergency” (replaces “emergency situation”) and “no-action alternative” in § 1940.302; and “applicant,” “construction work plan,” “distributed resources” (replaces “distributed generation”), “environmental review,” “loan/system designs” (replaces “loan design”), and “preliminary architect/engineering report” (replaces “preliminary engineering report”) in § 1794.6.

New definitions are proposed for the following terms: “Agency,” “critical action,” “design professionals,” “financial assistance,” “guaranteed lender,” “historic property,” “Indian tribe,” “multi-tier recipient,” and “loan servicing actions.” Such terms define actions (critical action, loan-servicing action), entities (multi-tier recipients, guaranteed lender, design professionals), and other terms not previously defined, but that are important to environmental policies and procedures within the Agency.

#### Actions Requiring Environmental Review (§ 1970.8)

This proposed section identifies the types of actions that the Agency considers to be major Federal actions subject to the requirements of NEPA and other applicable environmental requirements.

This proposed section is based on and further clarifies information found in § 1794.20 regarding parameters that will help Agency staff determine whether the applicant has sufficient control over the proposal to make the proposal subject to the requirements of NEPA and other applicable environmental requirements. Currently, § 1970.8 reiterates what is stated in § 1794.20 in

that actions for which the applicant has less than 5 percent ownership control are not considered federal actions subject to this part. The agency determined that an inconsistency existed in § 1794.21(b)(17) in that a 5 percent or less ownership control was classified as a CE. The requirements in this proposed section are also similar to those in existing § 1794.3 and three sections in 7 CR part 1940, subpart G: §§ 1940.301(h), 1940.311, and 1940.312.

Section 1970.8(b)(2)(ii) provides that all Loan-servicing actions, including all consents or approvals given by an Agency, are major Federal actions. The consents and approvals of an Agency to be deemed major Federal actions would include, but not be limited to, consents and approvals given in connection with an entity that has previously received Agency funding and is required to seek Agency consent or approval under its existing agreements with the Agency as a prerequisite to receiving funding from another source. Under existing § 1794.3, RUS's approvals were deemed not to be major Federal actions by RUS. However, in order to have a more consistent analytical approach among agencies within USDA, under the proposed rule all Agency consents and approvals, including all consents and approvals given by RUS, will be deemed to be major Federal actions. Although an Agency's loan-servicing actions are deemed major Federal actions under § 1970.8(b)(2), the proposed rule provides that an Agency's loan-servicing actions may be classified as a CE under § 1970.53(a)(5).

This proposed section also recognizes the need to address certain major Federal actions that occur outside the borders of the United States, and identifies the geographic locations where NEPA and other applicable environmental requirements apply. NEPA applies not only to actions proposed within the United States, but also to actions proposed in any other commonwealth, territory, or possession of the U.S. such as Guam, Federated States of Micronesia, Republics of the Marshall Islands and of Palau, U.S. Virgin Islands, Commonwealth of the Northern Mariana Islands, and Puerto Rico. The Republic of Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, in particular, are subject to Compacts of Free Association with the U.S. These compacts are Federal laws and specify that NEPA is generally applicable to major Federal actions that are proposed within those countries. See [http://www.usa.gov/Agencies/State\\_and\\_Territories.shtml](http://www.usa.gov/Agencies/State_and_Territories.shtml). This proposed section has been added to clarify NEPA's geographic

applicability outside of the U.S. to territories or associated states of the U.S.

#### Levels of Environmental Review (§ 1970.9)

This proposed section identifies three classes of actions and the related levels of environmental review for applicant proposals and Agency actions. The proposed section also requires applicants to describe their proposals in sufficient detail such that the Agency can properly determine the required level of review. The determination of the level of environmental review is not itself an action that requires NEPA review.

While the proposed section has no analogous sections in either 7 CFR parts 1794 or 1940, subpart G, information relating to the three levels of review is included in separate sections on CEs, EAs, and EISs (§§ 1970.310 through 1940.313—CEs, Class I and Class II EAs, and EISs, respectively; and §§ 1794.21 through 1794.25—CEs with and without Environmental Report, EAs with and without scoping, and EISs, respectively).

This proposed section was added (1) to consolidate information regarding the three levels of review and to make that information consistent with the CEQ regulations; (2) to describe the content and organization of the Agency's environmental policies and procedures; (3) to recognize that all aspects of a proposed action and proposals that are related to each other in such a way as to be a single course of action (connected actions) must be evaluated in a single environmental document (e.g., an Environmental Questionnaire, an EA, or an EIS), and (4) to address multi-year Telecommunication Program Loan/System Designs and multi-year Electric Program Construction Work Plans.

#### Raising the Level of Environmental Review (§ 1970.10)

This proposed section identifies the conditions that could trigger the need for a higher level of review than that classified in subparts B (CE) or C (EA) of the proposed rule. These conditions include site-specific environmental conditions or scientific controversy. In such situations, the Agency will determine whether extraordinary circumstances, as defined in § 1970.52, or the potential for significant environmental impacts warrant a higher level of review (e.g., a CE action would be raised to the level of an EA review, or an EA action would be raised to the level of an EIS review).

There are no analogous sections in 7 CFR parts 1940, subpart G, or 1794.

While § 1940.319(g) acknowledges the potential for controversy and describes how environmental controversy should be addressed, it requires completion of a Class II EA in such circumstances. As has been noted previously, the distinction between Class I and Class II EAs in 7 CFR part 1940 has been eliminated. However, this proposed section makes it clear that an action that may be a Class I EA under the existing 7 CFR part 1940, subpart G, and that is now proposed to be a CE could require the preparation of an EA (or an EIS) if there are extraordinary circumstances related to the proposal (e.g., presence of sensitive resources or scientific controversy). The Agency is solely responsible for making this determination.

#### Timing of the Environmental Review Process (§ 1970.11)

The requirements in this proposed section are similar to §§ 1940.315, 1794.11, 1794.44, 1794.64, and 1794.73. Information relating to timing, previously contained in multiple sections in 7 CFR part 1794, based on the level of environmental review, is proposed for consolidation into this proposed section. Much of the detail in 7 CFR part 1940 relating to the Agency pre-application process and associated forms are proposed for elimination because those programs have been transferred to the FSA. This proposed section has also been revised to make it clear that the obligation of funds is directly tied to the conclusion of the environmental review process. It provides the specific steps that must be completed before the environmental review process is formally concluded.

The Agency is also proposing to add a provision relating to third-party contracting in this proposed section. Consistent with the CEQ regulations (40 CFR 1506.5(c)) and the practices of other agencies such as the U.S. Department of Energy (10 CFR 1021.215(d) and 1021.310) and the U.S. Environmental Protection Agency (40 CFR 6.303), the Agency is proposing to require applicants to solicit and procure professional services of third-party contractors to assist in the preparation of an EIS. The third-party contracting process is addressed in proposed § 1970.152, and the Agency's basis for this addition is described in Section V.C. below.

Proposed § 1970.11 makes it clear that the Agency is responsible for selecting a third-party EIS contractor and that applicants may not procure the services of any EIS contractor without approval by the Agency. This provision was added to ensure that the Agency would

be in control of the preparation of an EIS.

#### Limitations on Actions During the NEPA Process (§ 1970.12)

This proposed section provides that applicants may not take actions concerning a proposal that may have an environmental impact or that would limit or affect the Agency's decision until the Agency's review process has been concluded. The requirements in this proposed section are consistent with CEQ regulations (40 CFR 1506.1) and similar to the existing regulations at §§ 1940.309(e) (relating to responsibilities of the applicant) and 1794.15 (Limitations on actions during the EIS process).

The proposed section allows the Agency to deny financial assistance where an applicant has been found to have engaged in anticipatory demolition as that term is used in the NHPA (Section 110(k)) referring to a historic property that may be purposefully destroyed or irreparably harmed. It also includes a provision regarding ongoing construction activities. Occasionally, applicants have applied for Agency financial assistance on a project after construction has started. Examples include when funding from another source has been withdrawn or the applicant incurs a cost overrun before construction is complete. The Agency has put in place stringent requirements to assure that the applicant is not attempting to avoid environmental compliance requirements. The proposed section describes the requirements that would apply in these types of circumstances.

Finally, this proposed section includes a discussion of when an applicant, with the prior written consent of the Agency, may make minimal expenditures in furtherance of a proposal prior to the completion of the NEPA process. This section is similar to that found in § 1794.15 (there is no analogous discussion in 7 CFR part 1940, subpart G). The proposed section is consistent with the CEQ regulations (40 CFR 1506.1(d)), which specifically allow for RUS (as successor to the Rural Electrification Administration (REA)) "approval of minimal expenditures not affecting the environment (e.g., long leadtime equipment and purchase options) made by non-governmental entities seeking loans from [RUS]." A specific reference to this CEQ provision is included in the proposed rule.

#### Consideration of Alternatives (§ 1970.13)

This proposed section provides that the Agency should consider all

reasonable alternatives when conducting a NEPA analysis. The Agency will also consider technical and economic feasibility when determining whether an alternative is reasonable. It also requires evaluation of the “No Action” alternative, at a minimum, for proposals subject to 7 CFR part 1970, subpart C (EAs). For proposals subject to 7 CFR part 1970, subpart D (EISs), the requirements of 40 CFR 1502.14 (Alternatives Including the Proposed Action) must be followed with respect to evaluation of reasonable alternatives.

This proposed section also recognizes that the level of analysis of alternatives will depend on the nature and complexity of the proposal. For example, an EA for a small project with limited potential environmental impacts is likely to need a less robust alternatives analysis than an EA or an EIS for a multi-faceted project with the potential for large impacts to sensitive resources. In some cases, analyzing only the proposed action and the No Action alternative may be appropriate.

The requirements in this proposed section are similar to those in § 1794.12. However, the factors the Agency will consider in determining whether an alternative is reasonable have been modified. The factors found in § 1794.12, while potentially applicable, are more specific to RUS programs (e.g., size, scope, state of technology; legal and socioeconomic concerns; availability of resources; and timing). For that reason, the Agency proposes to state more generally that factors such as economic and technical feasibility will be taken into account in determining whether a particular alternative should be considered reasonable. Additional details or examples are more appropriate for and will be provided in staff instruction and/or applicant guidance.

While there is no analogous section in 7 CFR part 1940, subpart G, existing § 1940.312(g) and (h) define “No Action” and “practicable alternative,” respectively. “Practicable alternative” is the term used in Executive Order 11988, Floodplain Management; the CEQ regulations require analysis of all “reasonable” alternatives (40 CFR 1502.14). In the existing regulations, § 1940.312(h) identifies three types of alternatives that must be analyzed to determine whether a “practicable alternative” exists, including alternative project sites or designs, projects with benefits similar to the proposed action, and the no action alternative. While these three types of alternatives are consistent with the range of “reasonable” alternatives that might be evaluated in an Agency EA or EIS, the

modifier “practicable” is not used in this proposed rule in order to be consistent with the CEQ regulations.

#### Public Involvement (§ 1970.14)

This proposed section describes how the Agency will meet its responsibility to involve the public including minority or low-income populations, and consult with other agencies. To accomplish this, the Agency will publish notices, conduct meetings, and use other means as necessary to inform the public regarding the proposed action and associated NEPA process. This section also describes the scoping process, including scoping meetings, agency responsibilities for notifying the public, making documents publicly available, and the handling of public comments.

The requirements in this proposed section are similar to those currently found in §§ 1940.331 and 1794.13. However, the proposed section includes several revisions. One important revision is the elimination of references to Class I and Class II EAs in 7 CFR part 1940 and EAs with and without scoping in 7 CFR part 1794 as discussed previously. Accordingly, under the proposed section, scoping will be required for all EAs. This will fulfill the requirements and the spirit of NEPA as well as provide certainty to Agency staff, applicants, and other interested parties. While scoping is required for all EAs under the proposed section, the requirement for scoping meetings, previously identified for EAs with scoping under part 1794, is now at the Agency’s discretion.

The proposed rule also requires public review of EAs. This provision is consistent with the requirements of 7 CFR part 1794, but represents a change from 7 CFR part 1940, which specifies no formal public involvement process for EAs. The section has also been updated to identify other appropriate methods of public involvement such as posting information on the Internet or using other electronic media.

The proposed section specifies the role of applicants in supporting the Agency’s public involvement activities, including outreach to minority or low income populations and participation in consultation with Federal, state and local agencies; Federally recognized American Indian tribes and Alaska Native organizations; Native Hawaiian organizations; and interested parties. To assist Agency staff in reaching a wider and more diverse public, the proposed rule requires greater applicant support for outreach efforts than is described in the existing regulations. However, as a practical matter, Agency staff currently seeks and receives such support from

applicants on an informal basis. The proposed rule would codify this practice. Additional information on scoping is provided in proposed § 1970.153, Notice of Intent and Scoping.

#### Interagency Cooperation (§ 1970.15)

This proposed section provides that the Agency will, when practicable, eliminate duplication of Federal, State, and local procedures by coordinating with other Federal agencies; adopting appropriate environmental documents prepared for or by other Federal agencies; cooperating with State and local governments, such as in the preparation of joint documents prepared under a given State Environmental Policy Act (SEPA); and incorporating other environmental documents by reference or adopting other documents in accordance with 40 CFR 1502.21 and 1506.3.

The requirements in this proposed section consolidate information previously found in multiple sections within the existing regulations, including §§ 1794.71, 1794.72, 1794.74, 1940.324 through 1940.329, and 1940.334. With respect to the sections currently found in 7 CFR part 1940, much of the detail relating to responsibilities as a lead and cooperating agency, incorporation by reference, and compliance with SEPAs has been eliminated, although the general requirements have been retained. The detailed information regarding compliance procedures is more appropriate for and will be included in staff instruction and/or applicant guidance.

#### Mitigation (§ 1970.16)

This proposed section consolidates information in the existing regulations pertaining to mitigation, and specifically addresses the monitoring of mitigation commitments. It also requires that all mitigation measures be included in Agency commitment and decision documents. The requirements in this proposed section are consistent with those in the existing § 1794.17. Although there is no analogous section in 7 CFR part 1940, subpart G, mitigation is defined in § 1940.302(f), mitigation measures are discussed as part of Class II EAs in § 1940.318, and monitoring is the subject of § 1940.330. In practice, the Agency has typically considered and imposed mitigation measures where appropriate. Accordingly, the Agency is proposing to codify its ongoing commitment to mitigation and to mitigation monitoring in particular in this proposed rule.

### Programmatic Analyses and Tiering (§ 1970.17)

This proposed section requires the Agency to consider preparing programmatic level environmental impact analyses for new programs or major changes to programs if better decision making will be fostered, or tiering if it would result in a reduction in delay and paperwork in accordance with 40 CFR 1502.20. As described in the CEQ regulations, a programmatic NEPA document refers to a broad-scope EIS or EA that identifies and assesses the environmental impacts of an agency program. Tiering, as defined in 40 CFR 1508.28, refers to the coverage of general matters in a broader EIS (policy or national programs) with subsequent narrower statements or environmental analyses incorporating by reference the general discussions and concentrating solely on issues specific to the statement subsequently prepared. Agencies are encouraged to tier their EISs to eliminate repetitive discussion of the same issues and focus on issues ripe for decision at each level of the environmental review (40 CFR 1502.20).

The requirements in this proposed section are consistent with the existing §§ 1940.327 and 1794.16 related to tiering. However, information has been added to clarify for applicants when the Agency would consider the preparation of a programmatic analysis.

### Emergencies (§ 1970.18)

This proposed section provides that when an emergency exists and the Agency determines that it is necessary to take urgently needed actions, the Agency may take actions necessary to control the immediate impacts of the emergency before preparing an environmental impact analysis and any required documentation. “Emergency actions” are defined in the proposed rule as those actions that are urgently needed to return damaged facilities to service and to mitigate harm to life, property, or important natural or cultural resources.

The requirements in this proposed section are similar to the existing § 1940.332. However, the proposed rule distinguishes among an urgent response, a CE or EA level action, and an EIS level action. It also eliminates the distinction between Class I and Class II EAs found in the existing regulations for reasons discussed above, and includes a definition of emergency action. There is no analogous section in 7 CFR part 1794. In accordance with 40 CFR 1506.11, if emergency circumstances make it necessary to take an action for an EIS level action, the Agency will

contact CEQ about alternative arrangements.

### B. Subpart B—Categorical Exclusions Applying CEs (§ 1970.51)

This proposed section provides that the actions listed in §§ 1970.53 through 1970.55 are classes of actions that the Agency has determined do not normally individually or cumulatively have a significant effect on the environment. For an action to meet the requirements of a categorical exclusion: (1) An action must fit within the classes of actions listed in §§ 1970.53 through 1970.55; (2) there must be no extraordinary circumstances related to the proposal; and (3) the proposal must not be connected to other actions with potentially significant impacts.

The proposed regulation states that most of the CEs listed apply to any program of the Agency; only a few apply to a particular program because the specified activity occurs only under that program. In addition, a proposed action that consists of one or more components may be categorically excluded only if all components of the proposed action are eligible for a CE. For example, a proposal to rehabilitate an existing structure (§ 1970.53(c)(2)) and install a small solar electric project (§ 1970.53(d)(5)) could be categorically excluded because both components of the proposed action fall within a proposed CE.

Failure to comply with 7 CFR part 1970, subpart B will postpone further consideration of an applicant’s proposal until such compliance is achieved or the applicant withdraws the proposal. If compliance is not achieved, the Agency will deny the request for financial assistance.

The requirements in the proposed section are similar to the existing §§ 1940.310(a) through (d) and 1940.317, and expand on §§ 1794.30 and 1794.31, which make a general reference to RUS CEs and their classification. The reference and discussion relating to connected actions is new, and has been added to the proposed rule to be consistent with the CEQ NEPA regulations (40 CFR 1508.18).

### Extraordinary Circumstances (§ 1970.52)

This proposed section defines extraordinary circumstances as unique situations presented by specific proposals, such as characteristics of the geographic area affected by the proposal, scientific controversy about the environmental effects of the proposal, uncertain effects or effects involving unique or unknown risks, and

unresolved conflicts concerning alternate uses of available resources within the meaning of § 102(2)(E) of NEPA. The section provides examples of what the Agency considers to be extraordinary circumstances. In the presence of extraordinary circumstances, an action that may fall within the definition of a CE will be the subject of an EA or an EIS prepared in accordance with, 7 CFR part 1970, subparts C and D.

The proposed section is similar to the existing 7 CFR 1940.310(a) and 1940.317(e), except that § 1940.317(e)(9), (10), and (11) relating to important farmland, prime forest lands, and prime rangelands are no longer listed as extraordinary circumstances. In accordance with the Farmland Protection Policy Act, however, actions that propose to convert important farmland to nonagricultural lands are still required to evaluate other practicable alternatives. In addition, the provisions in § 1940.311(d)(1) requiring the preparation of an EA for a proposal involving environmental controversy has been added to proposed § 1970.52.

The listing of extraordinary circumstances has also been expanded from 7 CFR part 1940 to include three new situations: (1) Any violation of applicable Federal, state, or local statutory, regulatory, permit, or Executive order requirements for environment, safety, and health; (2) certain activities relating to the management of Resource Conservation and Recovery Act regulated wastes; and (3) any proposal likely to cause uncontrolled or unpermitted releases of hazardous substances, pollutants, contaminants, or petroleum and natural gas products. While the Agency has considered these circumstances in practice, the Agency determined that they should be included in the formal rule.

There is no analogous section in 7 CFR part 1794, although “extraordinary circumstances” are referenced in §§ 1794.21 and 1794.30.

### CEs Involving No or Minimal Construction (§ 1970.53)

The Agency has determined, based on experience, that the potential for actions to have significant impacts on the human environment is generally avoided when the action: (1) Includes no construction or no significant alteration of ambient conditions (including air and water emissions); (2) takes place within a previously disturbed or previously developed area; or (3) would be small-scale in nature with only localized impacts in an area that is limited in size based on a specific

threshold(s) (e.g., acreage) set by the Agency. The use and meaning of certain qualifying provisions, such as small-scale, are discussed in Section IV.

The CEs in this proposed section are for proposals that involve no or minimal alterations in the physical environment and typically occur on previously disturbed or developed land. They include routine financial actions, information gathering activities, and modifications to existing facilities. It is the Agency's view that the CEs in this proposed section typically do not involve extraordinary circumstances and have not resulted in significant environmental impacts in the past. For these reasons, applicants will not normally be required to provide environmental documentation on the proposed actions included in this section beyond the project description that is part of any application. However, the Agency may request additional environmental documentation from the applicant if the Agency determines that additional information is needed for the Agency to determine the appropriate level of NEPA review.

Most of the CEs in proposed § 1970.53 are the same as those currently found in the RHS/RBS and RUS regulations; a few new CEs are also proposed. Table 1 lists all of the proposed CEs in § 1970.53 and indicates whether they were derived from existing Agency CEs (and if so, where) or whether they are new. Table 1 also lists relevant Class I EAs, now classified as CEs (see Section V.C for additional detail).

The explanation and justification for proposing the new CEs in § 1970.53 is provided in Table 2. Some of the proposed new CEs are based on Agency experience in preparing EAs that have always resulted in FONSI for these or similar types of proposals; some proposed CEs are based on a CE promulgated by another Federal agency for a similar type of proposal. As noted in Section IV, the adoption of CEs promulgated by other agencies is encouraged by the CEQ CE Guidance (75 FR 75628 (2010)).

Some RHS/RBS CE actions are not included in the proposed rule. Such actions are not included because they are administered by FSA and not eligible for Agency funding or they are included in proposed § 1970.53. These are:

§ 1940.310(d)(1) Financial assistance for the purchase of an existing farm, or an enlargement to one, provided no

shifts in land use are proposed beyond the limits stated in paragraphs (d)(10) and (11) of this section;

§ 1940.310(d)(2) Financial assistance for the purchase of livestock and essential farm equipment, including crop storing and drying equipment, provided such equipment is not to be used to accommodate shifts in land use beyond the limits stated in paragraphs (d)(10) and (11) of this section;

§ 1940.310(d)(3) Financial assistance for (i) the payment of annual operating expenses, which does not cover activities specifically addressed in this section or §§ 1940.311 or 1940.312 of this subpart; (ii) family living expenses; and (iii) refinancing debts;

§ 1940.310(d)(4) Financial assistance for the construction of essential farm dwellings and service buildings of modest design and cost, as well as repairs and improvements to them;

§ 1940.310(d)(5) Financial assistance for onsite water supply facilities to serve a farm dwelling, farm buildings, and livestock needs;

§ 1940.310(d)(6) Financial assistance for the installation or enlargement of irrigation facilities, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers, designed to irrigate less than 80 acres, provided that neither a State water quality standard, a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. If a wetland is affected, the application will fall under Class II as defined in § 1940.312 of this subpart. Potential effects to a water quality standard, an historic property or the Wild and Scenic Rivers System require that a review be initiated under a Class I assessment as specified in § 1940.317(g) of this subpart.

§ 1940.310(d)(7) Financial assistance that solely involves the replacement or restoration of irrigation facilities, to include those facilities described in paragraph (d)(6) of this section, with minimal change in use, size, capacity, or location from the original facility(s) provided that neither a State water quality standard, a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. If a wetland is

affected, the application will fall under Class II as defined in § 1940.312 of this subpart. Potential effects to a water quality standard, an historic property, or the Wild and Scenic Rivers System require that a Class I assessment be completed as specified in § 1940.317(g) of this subpart. Also, to qualify for this exclusion, the facilities to be replaced or restored must have been used for similar irrigation purposes at least two out of the last three consecutive growing seasons. Otherwise, the action will be viewed as an installation of irrigation facilities.

§ 1940.310(d)(8) Financial assistance for the development of farm ponds or lakes of no more than 5 acres in size, provided that, neither a State water quality standard, a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. If a wetland is affected, the application will fall under Class II as defined in § 1940.312 of this subpart. Potential effects to a water quality standard, an historic property, or the Wild and Scenic Rivers System require that a review be initiated under a Class I assessment as specified in § 1940.317(g) of this subpart;

§ 1940.310(d)(9) Financial assistance for the conversion of (i) land in agricultural production to pastures or forests, or (ii) pastures to forests;

§ 1940.310(d)(10) Financial assistance for land-clearing operations of no more than 15 acres, provided no wetlands are affected, and financial assistance for any amount of land involved in tree harvesting conducted on a sustained yield basis and according to a Federal, State or other governmental unit approved forestry management and marketing plan; and

§ 1940.310(d)(11) Financial assistance for the conversion of no more than 160 acres of pasture to agricultural production, provided that in a conversion to agricultural production no State water quality standard or wetlands are affected. If a wetland is affected, the application will fall under Class II as defined in § 1940.312 of this subpart. If a water quality standard would be impaired or antidegradation requirement not met, a Class I assessment is required as specified in § 1940.317(g) of this subpart.

TABLE 1—SOURCES FOR PROPOSED CATEGORICAL EXCLUSIONS IN § 1970.53

Proposed categorical exclusions 7 CFR part 1970	Source: RHS/RBS regulations (7 CFR part 1940–G)	Source: RUS regulations (7 CFR part 1794)
<b>§ 1970.53 Categorical Exclusions Involving No or Minimal Construction (no documentation required)</b>		
<b>§ 1970.53(a) Routine Financial Actions</b>		
§ 1970.53(a)(1) Refinancing of debt .....	§ 1940.310(c)(1). § 1940.310(d)(3).	
§ 1970.53(a)(2) Purchase, transfer, lease or other acquisition of real property with no or minimal change in use.	§ 1940.310(b)(1) ..... § 1940.310(b)(9) ..... § 1940.310(c)(1). § 1940.310(c)(2). § 1940.310(d)(1).	§ 1794.21(b)(1). § 1794.22(b)(7).
§ 1970.53(a)(3) Purchase, transfer or lease of personal property or fixtures with no or minimal change in operations.	§ 1940.310(c)(1) ..... § 1940.310(c)(5) ..... § 1940.310(d)(2) .....	§ 1794.21(b)(1). § 1794.21(b)(13). § 1794.21(c)(2).
§ 1970.53(a)(4) Financial assistance for operating (working) capital for an existing operation to support day-to-day expenses.	§ 1940.310(c)(1). § 1940.310(d)(3).	
§ 1970.53(a)(5) Actions taken by Agency after provision of financial assistance involving no or minimal construction or change in operations.	§ 1940.310(e)(2). Class I EAs: § 1940.311(d)(2) and § 1940.311(d)(3).	§ 1794.21(b)(2). § 1794.21(c)(4).
§ 1970.53(a)(6) Rural Business Investment Program Actions .....	1940.310(c)(7).	
§ 1970.53(a)(7) Guaranteed underwriting loans .....	New CE. See Table 2.	
<b>§ 1970.53(b) Information Gathering and Technical Assistance</b>		
§ 1970.53(b)(1) Information gathering, data analysis, document preparation, and information dissemination.	§ 1940.310(e)(1) ..... § 1940.310(b)(10) .....	§ 1794.21(a)(1). § 1794.21(b)(11). § 1794.21(c)(3).
§ 1970.53(b)(2) Technical advice, training, planning assistance and capacity building.	§ 1940.310(b)(4) ..... § 1940.310(b)(6). § 1940.310(c)(4). § 1940.310(e)(1).	§ 1794.21(c)(3).
§ 1970.53(b)(3) Site characterization, environmental testing, and monitoring with no significant alteration of existing ambient conditions.	§ 1940.310(e)(1) .....	§ 1794.21(b)(10). § 1794.21(b)(11).
<b>§ 1970.53(c) Small-Scale Construction and Minor Modification Proposals</b>		
§ 1970.53(c)(1) Minor modifications or revisions to previously approved projects where such activities do not significantly alter the purpose, operation, location, or design of the project as originally approved.	§ 1940.310(c)(6) ..... Class I EA: § 1940.311(d)(2).	§ 1794.21(c)(4).
§ 1970.53(c)(2) Repair, upgrade, or replacement of equipment or fixtures in existing structures to improve habitability, increase energy efficiency, or reduce pollution.	§ 1940.310(b)(3) ..... § 1940.310(b)(7) ..... § 1940.310(c)(2) ..... § 1940.310(d)(4).	§ 1794.21(a)(4). § 1794.21(b)(20). § 1794.21(b)(22).
§ 1970.53(c)(3) Any internal modification or minimal external modification, restoration, renovation, maintenance and replacement in-kind to an existing facility or structure.	§ 1940.310(b)(3) ..... § 1940.310(b)(7) ..... § 1940.310(c)(2) .....	§ 1794.21(b)(3). § 1794.21(b)(5). § 1794.21(b)(6). § 1794.21(b)(7). § 1794.21(b)(9). § 1794.22(b)(1).
§ 1970.53(c)(4) Construction of or improvements to a single-family dwelling or a multi-family housing project serving up to four families, except when financing is provided through a Rural Housing Site Loan.	§ 1940.310(b)(1). § 1940.310(b)(3). § 1940.310(b)(7). § 1940.310(b)(8).	
§ 1970.53(c)(5) Siting, construction, and operation of new or additional water supply wells for residential, farm, or livestock use.	§ 1940.310(d)(5) .....	§ 1794.21(b)(23). § 1794.22(b)(5) EA: § 1794.22(c)(1).
§ 1970.53(c)(6) Modifications of an existing water supply well to restore production in existing water well fields where there would be no drawdown other than in the immediate vicinity of the pumping well, no resulting long-term decline of the water table, and no degradation of the aquifer from the new or replacement well.		§ 1794.21(b)(23).
§ 1970.53(c)(7) New utility service connections to individual users or construction of utility lines or associated components where the applicant has no control over the placement of the utility facilities.		§ 1794.21(b)(16).
§ 1970.53(c)(8) Conversion of land in agricultural production to pastureland or forests, or conversion of pastureland to forest.	§ 1940.310(d)(9).	
§ 1970.53(c)(9) Land-clearing operations of no more than 15 acres .....	§ 1940.310(d)(10).	

TABLE 1—SOURCES FOR PROPOSED CATEGORICAL EXCLUSIONS IN § 1970.53—Continued

Proposed categorical exclusions 7 CFR part 1970	Source: RHS/RBS regulations (7 CFR part 1940–G)	Source: RUS regulations (7 CFR part 1794)
§ 1970.53(c)(10) Conversion of no more than 160 acres of pastureland to agricultural production..	§ 1940.310(d)(11).	
<b>§ 1970.53(d) Small Energy or Telecommunications Proposals</b>		
§ 1970.53(d)(1) Changes to existing telecommunication facilities or electric distribution and transmission lines that involve pole replacement or structural components where either the same or substantially equivalent support structures at the approximate existing support structure location are used.	.....	§ 1794.22(a)(5).
§ 1970.53(d)(2) Phase or voltage conversions, reconductoring, or upgrading of existing electric distribution lines or telecommunication facilities.	.....	§ 1794.21(b)(15).
§ 1970.53(d)(3) Addition of telecommunication cables and related facilities to electric transmission and distribution structures.	New CE. See Table 2.	
§ 1970.53(d)(4) Siting, construction, and operation of small ground source heat pump systems that would be located in previously disturbed land.	New CE. See Table 2.	
§ 1970.53(d)(5) Siting, construction, and operation of small solar electric projects or solar thermal projects to be installed on an existing structure with no expansion of the footprints of the existing structure.	New CE. See Table 2.	
§ 1970.53(d)(6) Siting, construction, and operation of small biomass projects that would use feedstock produced on site and supply gas or electricity for the site's own energy needs.	New CE. See Table 2. Class I EA: § 1940.311(c)(4).	
§ 1970.53(d)(7) Construction of small (one megawatt or less) standby electric generating facilities and associated facilities for the purpose of providing emergency power for or startup of an existing facility.	.....	§ 1794.21(b)(21).
§ 1970.53(d)(8) Additions or modifications to electric power transmission facilities that would not affect the environment beyond the previously developed facility area including, but not limited to, switchyard rock grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms.	.....	§ 1794.21(b)(7).
§ 1970.53(d)(9) Safety, environmental, or energy efficiency improvements within an existing electric generation facility, including addition, replacement, or upgrade of facility components (such as precipitator, baghouse, or scrubber installations) that do not result in a change to the design capacity or function of the facility and do not result in an increase in pollutant emissions, effluent discharges, or waste products.	.....	§ 1794.21(b)(20). § 1794.21(b)(24).
<b>§ 1970.53(e) Promulgation of Rules or Formal Notices</b>		
§ 1970.53(e) Promulgation of Rules or Formal Notices .....	§ 1940.310(e)(3).	
<b>§ 1970.53(f) Agency Proposals for Legislation</b>		
§ 1970.53(f) Agency Proposals for Legislation .....	New CE. See Table 2.	
<b>§ 1970.53(g) Administrative Actions</b>		
§ 1970.53(g) Administrative Actions .....	§ 1940.310(e)(4) .....	§ 1794.21(a)(2).
	§ 1940.310(e)(5) .....	§ 1794.21(a)(3).

TABLE 2—EXPLANATION FOR NEW PROPOSED CATEGORICAL EXCLUSIONS IN PROPOSED § 1970.53

New proposed categorical exclusion 7 CFR part 1970	Explanation
§ 1970.53(a)(7) Guaranteed underwriting loans pursuant to Section 313A of the Rural Electrification Act.	Under Section 313A of the Rural Electrification Act the Agency guarantees payments on bonds or notes issued by not-for-profit lenders to the Federal Financing Bank if the proceeds are used to make loans for any telephone or electric purposes, other than electric generation, consistent with the Rural Electrification Act, or to refinance bonds and notes issued for such purposes. Section 313A guarantees are not issued for specific purposes, projects or utility providers. It has been the Agency's experience for several years that the proceeds of Section 313A guaranteed bonds and notes have been used to refinance outstanding bonds and notes that are general obligations of the not-for-profit lender that are not associated with specific projects. Based on its experiences with these transactions since 2005, the Agency has determined that these proposed routine financial actions will not individually or cumulatively have a significant impact on the environment.
§ 1970.53(d)(3) Addition of telecommunication cables and related facilities to electric transmission and distribution structures.	The Agency is adopting a U.S. Department of Energy CE that addresses these types of activities (CE B4.7). The U.S. Department of Commerce also has a similar CE (CE A-6). Confirming the absence of extraordinary circumstances (such as threatened or endangered species), and based on its own experience, the Agency has determined that these proposed actions will not individually or cumulatively have a significant impact on the environment.
§ 1970.53(d)(4) Siting, construction, and operation of small ground source heat pump systems that would utilize closed loops.	The Agency is adopting a U.S. Department of Energy CE that addresses these types of activities (CE B5.19). Confirming the absence of extraordinary circumstances (such as threatened or endangered species), and based on its own experience, the Agency has determined that these proposed actions will not individually or cumulatively have a significant impact on the environment.
§ 1970.53(d)(5) Siting, construction, and operation of small solar electric projects or solar thermal projects to be installed on an existing structure with no expansion of the footprint of the existing structure.	These systems are small (typically for single family housing or small businesses), promote the use of renewable energy, and typically disturb less than 0.25 acre. Given the footprint restriction, confirming the absence of extraordinary circumstances (such as threatened or endangered species), and based on its own experience, the Agency has determined that these proposed actions will not individually or cumulatively have a significant impact on the environment.
§ 1970.53(d)(6) Siting, construction, and operation of small biomass projects that would use feedstock produced on site and supply gas or electricity for the site's own energy needs.	These systems are small in size and typically disturb less than 0.25 acre. They are normally sited within an existing site such as a farm's manure lagoon or other waste facility to convert bio-gas (usually methane) into electricity. Example actions include animal waste anaerobic digesters or gasifiers that would use feedstock produced on site (such as a farm where the site has been previously disturbed) and supply gas or electricity for the site's own energy needs with no or only incidental export of energy. Given the on-site restriction, confirming the absence of extraordinary circumstances (such as threatened or endangered species), and based on its own experience, the Agency has determined that these proposed actions will not individually or cumulatively have a significant impact on the environment.
§ 1970.53(f) Agency Proposals for Legislation .....	This CE applies only to proposals for legislation that have no potential for significant impacts on the environment because they would allow for no or minimal construction or changes in operation.

As shown in Table 1, many CEs in § 1970.53 are based on, and consistent with, CEs found in § 1940.310, which has no applicant documentation requirements, and § 1794.21, which does not require the submission of an environmental report. In a few instances, CEs found in § 1794.22 (requiring an environmental report) or Class I EAs found in § 1940.311, both with documentation requirements, are included in a proposed § 1970.53 CE with no documentation requirements. In

these instances, which are addressed in the relevant sections below, the documentation requirements would be reduced under the proposed rule.

The following paragraphs describe each of the proposed CEs in § 1970.53.

Routine Financial Actions (§ 1970.53(a))

The proposed CEs described in this paragraph apply to the following routine financial actions:

- (1) Refinancing of debt, provided that the applicant is not using refinancing as a means of avoiding compliance with

the environmental requirements. This is a routine financial transaction that provides financial assistance to existing businesses or other entities to facilitate their continuing operations by reducing their debt payments. This proposed CE consolidates the scope of two existing RHS/RBS CEs (see Table 1). The provisions of the proposed CE are also similar to an existing CE promulgated by the U.S. Department of the Interior (DOI) relating to routine financial actions including guarantees, financial



assistance, income transfers, audits, fees, bonds, and royalties (43 CFR 46.210(c)).

(2) Financial assistance for the purchase, transfer, lease, or other acquisition of real property when no or minimal change in use is reasonably foreseeable. “No or minimal change” is defined in the proposed rule as meaning “no or only a small change in use, capacity, purpose, operation, or design is expected where the foreseeable type and magnitude of impacts would remain essentially the same.” The condition relating to minimal change in use is currently used in § 1940.310(c)(2). This is a routine financial transaction that normally has no potential for significant environmental impacts because there is no change to existing conditions. Because Rural Housing Site Loans involve subdivision development that would have the potential for significant environmental impacts, such loans are not eligible for this CE. Since these loans are typically for subdivision developments, the Agency believes new subdivision developments should be reviewed as an EA.

This proposed CE consolidates the scope of seven existing Agency CEs (see Table 1). With respect to existing § 1794.22(a)(11), which relates to the purchase of existing facilities or a portion thereof where the use or operation will remain unchanged, the requirement of a facility environmental audit in the existing CE is included as part of staff instruction (subpart J, Environmental Risk Management).

The provisions of the proposed CE are also similar to CEs promulgated by the U.S. Department of Energy (DOE) (10 CFR part 1021, Appendix B to subpart D, B 1.24) and the U.S. Environmental Protection Agency (EPA) (40 CFR 6.204(a)(2)(vi)), which relate to the acquisition, transfer, lease, or disposition of interests in real property for reasonably foreseeable uses. By adopting these CEs, these agencies have similarly concluded that these types of actions do not result in significant environmental impacts.

(3) Financial assistance for the purchase, transfer, or lease of personal property or fixtures involving no or minimal reasonably foreseeable changes in operations. The meaning of “no or minimal change” is the same as described under proposed § 1970.53(a)(2).

This proposed CE provides a list of actions that are included under this CE. This proposed CE also includes the approval of minimal expenditures such as contracts for long lead-time equipment and purchase options by applicants. This provision was not

included in 7 CFR part 1940–G, although it is consistent with § 1794.15(b)(2) and CEQ regulations (40 CFR 1506.1(d)).

This proposed CE consolidates six existing Agency CEs (see Table 1). The Agency’s implementation of these existing CEs has not resulted in the imposition of significant environmental impacts. The provisions of the proposed CE are also similar to existing CEs promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 1.7 and B 1.24), EPA (40 CFR 6.204(a)(2)(vi)), and the U.S. Department of Commerce (DOC) (Department Administrative Order 216–6, A–7 and A–9), which relate to the purchase of personal property such as communications and electronic equipment.

(4) Financial assistance for operating (working) capital for an existing operation to support day-to-day expenses. This is a routine financial transaction that provides financial assistance to existing businesses for their continuing annual operating expenses. This proposed CE consolidates and simplifies the content of two existing RHS/RBS CEs (see Table 1). The Agency’s implementation of these existing CEs has not resulted in the imposition of significant environmental impacts.

(5) Actions by the Agency after provision of financial assistance when those actions have no potential for significant adverse environmental impact because the actions would involve no or minimal construction or change in operations, such as foreclosure or certain consents and approvals. These actions generally include routine loan servicing actions. This proposed CE consolidates three existing Agency CEs (see Table 1), as well as two Class I EAs that have been reclassified as CEs based on Agency experience (see also Section V.C).

(6) Rural Business Investment Program actions. This CE is an existing provision under § 1940.310(c)(7), which involves actions that relate to non-leveraged program actions such as licensing by USDA of rural investment entities and leveraged program actions unless such Federal assistance is used to finance construction or development of land.

(7) Guaranteed underwriting loans issued by the Agency under Section 313A(a) of the Rural Electrification Act of 1936. This CE is new and is consistent with existing Agency practices but is presented separately for clarity. Under Section 313A of the Rural Electrification Act the Agency guarantees payments on bonds or notes issued to the Federal Financing Bank by

not-for-profit lenders if the proceeds are used to make loans for any telephone or electric purposes, other than electric generation, consistent with the Rural Electrification Act, or to refinance bonds and notes issued for such purposes. Section 313A guarantees are not issued for specific purposes, projects or utility providers. It has been the Agency’s experience for several years that the proceeds of Section 313A guaranteed bonds and notes have been used to refinance outstanding bonds and notes that were general obligations of the not-for-profit lender that were not underwritten for or associated with any specific projects. Based on its experiences with these transactions since 2002, the Agency has determined that these proposed routine financial actions will not individually or cumulatively have a significant impact on the environment.

Information Gathering and Technical Assistance (§ 1970.53(b))

The following proposed CEs described in this paragraph apply to routine administrative or financial assistance actions:

(1) Information gathering, data analysis, document preparation, and information dissemination. Some of the examples provided include research, literature surveys, computer modeling, conceptual design, feasibility studies, document distribution and classroom training. This proposed CE consolidates and clarifies five existing Agency CEs (see Table 1). While the proposed CE does not specifically address every activity found in the existing regulations (e.g., appraisals of nonfarm tracts and small farms for rural housing loans [§ 1940.310(b)(10)]), it is the Agency’s intent that such activities are included. The description of the information gathering activities in this proposed CE is intended to be general in nature and not limited to the examples provided. The provisions of the proposed CE are similar to existing CEs promulgated by DOI (43 CFR 46.210(e) and 46.210(j)), DOC (Department Administrative Order 216–6, A–3), and EPA (40 CFR 6.204(a)(2)(iii)), which relate to data and information collection and dissemination, data analysis, and testing.

(2) Technical advice, training, planning assistance and capacity building. This proposed CE expands on five existing Agency CEs (see Table 1) and incorporates the provisions of an existing CE promulgated by DOC (Department Administrative Order 216–6, A–8) which relates to classroom-based training and exercises using existing facilities. Similar to proposed

§ 1970.53(b)(1), the description is intended to be general and not limited to the examples given.

(3) Site characterization, environmental testing, and monitoring where no significant alteration of existing conditions would occur. Example actions include air, surface water, groundwater, wind, soil, or rock core sampling; installation of monitoring wells; installation of small scale air, water, or weather monitoring equipment. This proposed CE expands on three existing Agency CEs (see Table 1) by incorporating provisions from existing CEs promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 3.1), DOI (43 CFR 46.210(e)), and EPA (40 CFR 6.204(a)(2)(iii)), which relate to information and data collection, inventory (including field study), site characterization, and environmental monitoring activities. Similar to proposed § 1970.53(b)(1), the description is intended to be general and not limited to the examples given.

#### Small-Scale Construction and Minor Modification Proposals (§ 1970.53(c))

The proposed CEs described in this paragraph apply to financial assistance for the following actions:

(1) Minor modifications or revisions to previously approved projects provided such activities do not significantly alter the purpose, operation, location, or design of the project as originally approved. This proposed CE consolidates two existing Agency CEs (see Table 1), as well as a Class I EA that has been reclassified as a CE based on Agency experience (see also Section V.C).

(2) Repair, upgrade, or replacement of equipment or fixtures in existing structures for such purposes as improving habitability, reconstruction, energy efficiency, or pollution prevention. These actions normally have no potential for significant environmental impacts and this CE has been modified to incorporate seven existing Agency CEs (see Table 1). The provisions of the proposed CE are also similar to existing CEs promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 2.1, B 2.5, B 3.9(b), B 5.1, and B 6.3) and EPA (40 CFR 6.204(a)(1)(i)), which relate to routine maintenance, workplace enhancements, and facility safety and environmental improvements to an existing facility such as reducing emissions and waste generation, and conserving energy.

(3) Any internal modification or minimal external modification, restoration, renovation, maintenance and replacement in-kind to an existing facility or structure. These actions

normally have no potential for significant environmental impacts. This proposed CE has been modified to incorporate nine existing Agency CEs (see Table 1). The provisions of the proposed CE are similar to an existing CE promulgated by DOC (Department Administrative Order 216–6, A–1.), which relates to minor renovations and additions to buildings, equipment, and grounds that do not result in a change to the functional use of the property.

(4) Construction of or improvements to a single-family dwelling or a multi-family housing project serving up to four families, except when financing is provided through a Rural Housing Site Loan. Rural Housing Site Loans are typically for subdivision developments and the Agency believes new subdivision developments should be reviewed as an EA. However, it is the Agency's intent that this proposed CE include the financing of housing construction or the approval of lots in a previously approved Agency subdivision, as found in existing § 1940.310(b)(8). This is a routine financial transaction that the Agency has conducted extensively over the past 26 years and for which no significant adverse effects have resulted. This proposed CE has been modified to incorporate five existing RHS/RBS CEs (see Table 1).

(5) Siting, construction, and operation of new or additional water supply wells for residential, farm, or livestock use. This is a routine financial transaction that normally has no potential for significant environmental impacts. This proposed CE has been modified to incorporate two existing Agency CEs (see Table 1). The provisions of the proposed CE are similar to an existing CE promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 1.18), which relates to the siting, construction, modification, and operation of water supply wells.

(6) Modifications of an existing water supply well to restore production in existing water well fields, if there would be no drawdown other than in the immediate vicinity of the pumping well, no resulting long-term decline of the water table, and no degradation of the aquifer from the new or replacement well. This is a routine financial transaction that normally involves reviewing plans and information from State regulatory and permitting agencies and normally has no potential for significant environmental impacts. This proposed CE includes an existing RUS CE (see Table 1), and also incorporates provisions similar to a CE promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 1.18), which relates to

the siting, construction, modification, and operation of water supply wells.

(7) New utility service connections to individual users or construction of utility lines or associated components where the applicant has no control over the placement of the utility facilities. This proposed CE includes an existing RUS CE (see Table 1).

(8) Conversion of land in agricultural production to pastureland or forests, or conversion of pastureland to forest. This is an action that normally has no potential for significant environmental impacts. This proposed CE includes an existing RHS/RBS CE (see Table 1).

(9) Land-clearing operations of no more than 15 acres, provided any amount of land involved in tree harvesting is to be conducted on a sustainable basis and according to a Federal, State, or other governmental unit approved forestry management plan. This is an action that normally has no potential for significant environmental impacts. This proposed CE includes an existing RHS/RBS CE (see in Table 1).

#### Small Energy or Telecommunications Proposals (§ 1970.53(d))

The proposed CEs described in this paragraph apply to financial assistance for the following actions:

(1) Changes to existing telecommunication facilities or electric distribution and transmission lines that involve pole replacement or structural components only where either the same or substantially equivalent support structures at the approximate existing support structure location are used. This is a routine action that extracts a component of the existing 7 CFR 1794.22(a)(5) to encompass pole replacement which the Agency has determined, based on past experience, does not result in significant impact to environmental resources. The threshold reference in the existing regulation (i.e., less than 20 percent pole replacement) was not included. Instead, the Agency added provisions that are similar to an existing CE promulgated by the Bureau of Land Management (BLM) (Department of the Interior Departmental Manual 516, Chapter 11, E 13), which relates to upgrading of existing facilities which involve no additional disturbances outside the right-of-way boundary. Such provisions help ensure that there is no potential for significant impact.

(2) Phase or voltage conversions, reconductoring, or upgrading of existing electric distribution lines or telecommunication facilities. This is routine action that normally has no potential for significant environmental

impacts and which includes an existing RUS CE (see Table 1). The provisions of the proposed CE are also similar to an existing CE promulgated by DOC (Department Administrative Order 216–6, A–5), which relates to upgrading of existing radio communication towers that do not require ground disturbance; and by BLM (Departmental Manual 516, Chapter 11, E–16), which relates to acquisition of easements for an existing road or issuance of rights-of-way for use of existing facilities or improvements for the same or similar purpose.

(3) Addition of telecommunication cables and related facilities to electric transmission and distribution structures. The provisions of this proposed new CE are based on a similar CE promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 4.7) for adding fiber optic cable to transmission facilities or burying fiber optic cable in existing powerline or pipeline rights-of-way (see Table 2).

(4) Siting, construction, and operation of small ground source heat pump systems that would be located in previously disturbed land. These systems are very small (typically for single family housing or small businesses), promote the use of renewable energy, and typically disturb less than 0.25 acre of previously disturbed land. For these reasons, the Agency has determined that this proposed new CE is a routine action that normally has no potential for significant environmental impacts. This proposed CE is also similar to a CE recently promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 5.19) for the installation, modification, operation and removal of commercially available small-scale ground source heat pumps to support operations in single facilities (such as a school or community center) or contiguous facilities (such as an office complex) (see Table 2).

(5) Siting, construction, and operation of small solar electric projects or solar thermal projects to be installed on an existing structure with no expansion of the footprint of the existing structure. These systems are small (typically for single family housing or small businesses), promote the use of renewable energy, and typically disturb less than 0.25 acre. For these reasons, and the fact that the activity would occur within an existing footprint (already disturbed), the Agency has determined that this proposed new CE is a routine action that normally has no potential for significant environmental impacts (see Table 2).

(6) Siting, construction, and operation of small biomass projects, such as animal waste anaerobic digesters or

gasifiers that would use feedstock produced on site (such as a farm where the site has been previously disturbed) and supply gas or electricity for the site's own energy needs with no or only incidental export of energy. These systems are small and typically disturb less than 0.25 acre. They are normally sited within an existing and previously disturbed site such as a farm's manure lagoon or other waste facility to convert bio-gas (usually methane) into electricity, and include no or only incidental export of energy. This type of proposed action is currently included as a Class I EA in § 1940.311(c)(4) (see also Section V.C). All of the EAs prepared for these types of actions have resulted in FONSI's. For this reason, the Agency is proposing that these actions should be classified as eligible for a new CE (see Table 2).

(7) Construction of small standby electric generating facilities of one megawatt or less total capacity and associated facilities, for the purpose of providing emergency power for or startup of an existing facility. This is a routine action for emergency preparedness purposes at existing sites and typically disturbs less than 0.25 acre. This proposed CE includes an existing RUS CE (see Table 1).

(8) Additions or modifications to electric power transmission facilities that would not affect the environment beyond the previously developed facility area including, but not limited to, switchyard rock grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms. This proposed CE includes an existing RUS CE (see Table 1). The provisions of the proposed CE are also similar to an existing CE promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 4.6), which relates to the additions and modifications to transmission facilities.

(9) Safety, environmental, or energy efficiency improvements within an existing electric generation facility, including addition, replacement, or upgrade of facility components (such as precipitator, baghouse, or scrubber installations), that do not result in a change to the design capacity or function of the facility and do not result in an increase in pollutant emissions, effluents discharges, or waste products. This proposed CE includes two existing RUS CEs (see Table 1). The provisions of the proposed CE are also similar to an existing CE promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 5.1), which relates to actions to

conserve energy and promote energy efficiency.

#### Promulgation of Rules or Formal Notices (§ 1970.53(e))

This paragraph proposes to categorically exclude the promulgation of rules or formal notices for policies, programs, or projects that have no potential for significant environmental impacts because they would allow for no or minimal construction or changes in operations. This proposed CE would apply to the vast majority of Agency rules or notices regarding new or revised existing programs where the proposed implementation has no potential for significant adverse environmental impacts because they involve no or minimal alterations in the physical environment and typically occur on previously disturbed land. This proposed CE includes an existing RHS/RBS CE (see Table 1).

#### Agency Proposals for Legislation (§ 1970.53(f))

This paragraph proposes to categorically exclude Agency proposals for legislation that have no potential for significant environmental impacts because they would allow for no or minimal construction or changes in operations, where minimal change in use has been defined in the rule language in § 1970.53(a)(2). This proposed CE is new, but is consistent with other CEs listed in proposed § 1970.53 related to activities that involve no or only minor construction or changes in operation and which have been shown to have no significant impact based on Agency experience (see Table 2). All other proposed legislation would require preparation of an EA or, if necessary, an EIS (see proposed § 1970.151(b)(8)).

#### Administrative Actions (1970.53(g))

This paragraph proposes to categorically exclude administrative actions including procurement activities for goods and services, routine facility operations, and personnel actions. Such actions typically involve only paperwork type activities and have been shown to have no significant impact based on Agency experience. This proposed CE consolidates the content from four existing Agency CEs (see Table 1). This proposed CE is also based on similar CEs promulgated by DOE (10 CFR part 1021), Appendix A to subpart D, A.1 and EPA (40 CFR 6.204(a)(2)(i)) which include routine administrative, financial, and personnel actions.

CE Involving Small-Scale Development (§ 1970.54)

The CEs in this proposed section are for proposals that require an applicant to submit environmental documentation with their application to facilitate Agency determination of extraordinary circumstances. The proposed section provides that the environmental documentation must be submitted by the applicant as directed by the Agency. The proposed section also describes what the applicant's environmental documentation must contain, and specifies that the documentation submitted must be accurate, complete, and capable of verification.

While CEs listed in both proposed §§ 1970.53 and 1970.54 are all subject to a review with respect to extraordinary circumstances, the proposed CEs listed in § 1970.54 involve small-scale development and, as a result, have a greater potential to involve extraordinary circumstances. For this reason, the Agency proposes that for the CEs in this section, applicants be required to submit environmental documentation with their application to

facilitate Agency determination of the presence or absence of extraordinary circumstances. While in the Agency's experience, these actions generally do not pose the potential for significant environmental impacts, the Agency believes that additional scrutiny with regard to extraordinary circumstances would help ensure that the use of a CE was appropriate.

For the proposals listed in this section, failure to submit the required documentation will postpone further consideration of the applicant's proposal until the environmental documentation is submitted, or the Agency may deny the request for financial assistance. This provision highlights that, without sufficient information to determine the potential for extraordinary circumstances, the Agency cannot determine whether application of a CE within this section is appropriate. Without the ability to make such a finding, the Agency would be unable to approve the applicant's proposal. This approach is consistent with current Agency policy and practice and with NEPA requirements.

The proposed CEs in § 1970.54 (small-scale, site specific development, small-scale corridor development, and small energy proposals) are substantially the same as, or similar to, the Agency categorical exclusions (or Class I EAs) and/or other agencies current NEPA implementing regulations, with some modifications to clarify the intended applicability of the categorical exclusion. Table 3 lists all of the proposed CEs in § 1970.54 and indicates whether they were derived from existing Agency CEs (and if so, where) or whether they are new.

The explanation for proposing the new CEs in § 1970.54 is provided in Table 4. Some of the proposed new CEs are based on Agency experience in preparing EAs that have always resulted in FONSI for these or similar types of proposals; some proposed CEs are based on a CE promulgated by another Federal agency for a similar type of proposal. As noted in Section IV, the adoption of CEs promulgated by other agencies is encouraged by the CEQ CE Guidance (75 FR 75628 (2010)).

TABLE 3—SOURCES FOR PROPOSED CATEGORICAL EXCLUSIONS IN § 1970.54

Proposed categorical exclusions 7 CFR part 1970	Source: RHS/RBS regulations (7 CFR part 1940–G)	Source: RUS regulations (7 CFR part 1794)
<b>§ 1970.54 Categorical Exclusions Involving Small-Scale Development (documentation required)</b>		
<b>§ 1970.54(a) Small-Scale Site-Specific Development</b>		
§ 1970.54(a) Financial assistance for small-scale site-specific development activities (including construction, expansion, repair, rehabilitation or other improvements for rural development) on no more than 10 acres and where the action would not cause a substantial increase in traffic.	§ 1940.310(d)(4) ..... § 1940.310(d)(5) ..... Class I EAs: § 1940.311(c)(7) ..... § 1940.311(a)(1) ..... § 1940.311(b)(1) ..... § 1940.311(b)(3) ..... § 1940.311(a)(2) ..... § 1940.311(b)(2) ..... Class II EA: § 1940.312(a)(1) [if less than 10 acres], otherwise an EA].	§ 1794.21(b)(4). § 1794.21(b)(8). § 1794.21(b)(12). § 1794.21(b)(19). § 1794.21(b)(25). § 1794.21(b)(26). § 1794.22(a)(3). § 1794.22(a)(4). § 1794.22(b)(3).
<b>§ 1970.54(b) Small-Scale Corridor Development</b>		
§ 1970.54(b)(1) Construction or repair of roads, streets and sidewalks (and related structures) that would occur within an existing right-of-way and with minimal change in use, size, capacity, purpose or location from the original infrastructure.	§ 1940.310(c)(2) .....	
§ 1970.54(b)(2) Improvement and expansion of existing water, waste water and gas utility systems occurring within one mile of currently served areas (irrespective of capacity increase), or including an increase in capacity of not more than 30 percent of existing user population.	§ 1940.310(d)(5) ..... Class I EA: § 1940.311(b)(1) .....	§ 1794.22(b)(4). § 1794.22(b)(6).
§ 1970.54(b)(3) Replacement of utility lines [where road reconstruction is undertaken by non-Agency applicants] where relocation of lines is either within or immediately adjacent to the new road easement or right-of-way.	.....	§ 1794.21(b)(14).
§ 1970.54(b)(4) Construction of new distribution lines and associated facilities less than 69 kV.	.....	§ 1794.22(a)(1)(i).
§ 1970.54(b)(5) Installation of telecommunication lines, cables and related facilities.	.....	§ 1794.22(a)(2).

TABLE 3—SOURCES FOR PROPOSED CATEGORICAL EXCLUSIONS IN § 1970.54—Continued

Proposed categorical exclusions 7 CFR part 1970	Source: RHS/RBS regulations (7 CFR part 1940–G)	Source: RUS regulations (7 CFR part 1794)
<b>§ 1970.54(c) Small Scale Energy Proposals</b>		
§ 1970.54(c)(1) Construction of electric power substations (including switching stations and support facilities) or modification of existing substations and support facilities.	.....	§ 1794.22(a)(6). § 1794.22(a)(7).
§ 1970.54(c)(2) Construction of electric transmission lines 10 miles in length or less, but not for the integration of major new generation resources into a bulk transmission system.	.....	§ 1794.22(a)(1).
§ 1970.54(c)(3) Reconstruction (upgrading or rebuilding) and/or minor relocation of existing electric transmission lines 20 miles in length or less to enhance environmental and land use values, for reliability or access improvement.	.....	§ 1794.22(a)(5).
§ 1970.54(c)(4) Repowering or uprating modifications or expansion of an existing unit(s) up to 50 average MW at electric generating facilities where the action would be taken to maintain or improve efficiency, capacity, or energy output of the facility and where any air emissions from such activities are within the limits of an existing air permit.	.....	§ 1794.21(b)(24).
§ 1970.54(c)(5) Installation of new generating units or replacement of existing generating units at existing hydroelectric facility or dam where the action would result in no change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment.	.....	§ 1794.22(a)(9).
§ 1970.54(c)(6) Installation of heat recovery steam generator and steam turbine where the turbine has a rating of 200 average MW or less on an existing electric generation site for the purpose of combined cycle operations.	.....	§ 1794.22(a)(12).
§ 1970.54(c)(7) Construction of small electric generating facilities, excluding geothermal and solar electric projects, but including wind and biomass less than 10 average MW.	New CE. See Table 4.	
§ 1970.54(c)(8) Geothermal electric projects developed on up to 10 acres of land.	New CE. See Table 4.	
§ 1970.54(c)(9) Solar electric projects developed on up to 10 acres of land.	New CE. See Table 4.	
§ 1970.54(c)(10) Distributed resources of any capacity located at or adjacent to an existing landfill site or waste water treatment facility powered by refuse-derived fuel.	.....	§ 1794.22(a)(8).
§ 1970.54(c)(11) Small conduit hydroelectric facilities having a total installed capacity of not more than 5 MW using an existing conduit.	New CE. See Table 4.	
§ 1970.54(c)(12) Modifications or enhancements to existing facilities or structures that would not substantially change the footprint or function of the facility or structure and that are undertaken for the purpose of improving energy efficiency or promoting pollution prevention. This CE would cover new programs to promote renewable energy conversions and energy efficiency improvements to existing facilities.	New CE. See Table 4.	

TABLE 4—EXPLANATION FOR NEW PROPOSED CATEGORICAL EXCLUSIONS IN PROPOSED § 1970.54

New proposed categorical exclusion 7 CFR part 1970	Explanation
§ 1970.54(c)(7) Construction of small electric generating facilities, excluding geothermal and solar electric projects, but including wind and biomass less than 10 average MW.	This CE is similar to two CEs recently promulgated by the U.S. Department of Energy (CE B.5.18 and 5.20). In addition, Agency managers and environmental specialists have reviewed previous Agency EAs and determined that these types of proposals could be effectively evaluated at the CE level.
§ 1970.54(c)(8) Geothermal electric projects developed on up to 10 acres of land.	This CE is similar to a CE recently promulgated by the U.S. Department of Energy (CE B5.19). In addition, Agency managers and environmental specialists have reviewed EAs and determined that these types of proposals could be effectively evaluated at the CE level.
§ 1970.54(c)(9) Solar electric projects developed on up to 10 acres of land.	This CE is similar to two CEs recently promulgated by the U.S. Department of Energy (CE B5.16 and CE B5.17). In addition, Agency managers and environmental specialists have reviewed EAs and determined that these types of proposals could be effectively evaluated at the CE level.

TABLE 4—EXPLANATION FOR NEW PROPOSED CATEGORICAL EXCLUSIONS IN PROPOSED § 1970.54—Continued

New proposed categorical exclusion 7 CFR part 1970	Explanation
§ 1970.54(c)(11) Small conduit hydroelectric facilities having a total installed capacity of not more than 5 MW using an existing conduit.	The Agency has 7 years of experience in conducting EAs for small energy proposals and has found that these types of facilities have no potential to cause significant environmental effects. Other federal agencies have existing CEs for these types of actions and RD wishes to be consistent across agencies. The U.S. Department of Energy and the Federal Energy Regulatory Commission both have similar CEs (CE B5.24 [DOE] and 18 CFR §380.4(14) [FERC]).
§ 1970.54(c)(12) Modifications or enhancements to existing facilities or structures that would not substantially change the footprint or function of the facility or structure and that are undertaken for the purpose of improving energy efficiency or promoting pollution prevention. This CE would cover new programs to promote renewable energy conversions and energy efficiency improvements to existing facilities.	This CE is similar to two CEs recently promulgated by the U.S. Department of Energy (B 5.2 and 6.8) and Department of Commerce (A-1). In addition, Agency managers and environmental specialists have reviewed EAs and determined that these types of proposals could be effectively evaluated at the CE level.

For those CEs in § 1970.54 shown to be consistent with CEs in §§ 1794.22 (CEs with ER) and 1940.311 (Class I EAs), the documentation requirements under the proposed rule would be very similar to the requirements for Class I EAs (e.g., FmHA form 1940-20), but less than the ER requirements currently found in 1794.22. Because ERs are specific to RUS, they are not referenced in the proposed regulation. The Agency has determined that, based on experience, the level of documentation specified in § 1970.54 will provide sufficient environmental information to facilitate Agency determination of extraordinary circumstances.

For a limited number of CEs currently found in § 1794.21 (no ER), the documentation requirements would be greater under the proposed rule, although some level of documentation is still required under the existing regulations to allow Agency evaluation of an applicant's proposal. The Agency requirement for such documentation is to ensure that no extraordinary circumstances would be present in such projects.

*Small-scale site-specific development (§ 1970.54(a)).* The proposed CE described in this paragraph applies to financial assistance where site development activities (including construction, expansion, repair, rehabilitation or other improvements) for rural development purposes would impact not more than 10 acres of real property and would not cause a substantial increase in traffic.

The use of a 10-acre limit is based on current thresholds of 10 acres currently found in the existing § 1794.21(a)(22), which allows construction of facilities and buildings involving no more than 10 acres of physical disturbance or fenced property. The meaning of "substantial" relating to an increase in traffic is a subjective term (discussed in

Section IV), the meaning of which is dependent on the size of the project and the existing roadway infrastructure, capacity, and motor vehicle use. In general, it refers to a noticeable effect on the roads and the businesses or residents that utilize them, with respect to whether there would be an increased number of motor vehicles on the road resulting in congestion, longer travel times, etc.

By its terms, this proposed CE does not apply to new industrial proposals or new energy generation over 100 kilowatts (e.g., ethanol and biodiesel production facilities), or those classes of actions listed in §§ 1970.53, 1970.101, or 1970.151.

This proposed CE is intended to apply to a wide range of rural development activities under the Agency's 86 programs. Rather than attempting to provide an exhaustive list of proposed actions to which the Agency intends this CE to apply, several examples of such purposes and activities are provided. An attempt to provide an exhaustive list could too easily result in a failure to include all appropriate proposed actions thereby preventing the application of this CE to activities for which the CE is appropriate.

One of the examples provided in this section is the construction of telecommunications towers and associated facilities, if the towers and associated facilities are 450 feet or less in height and would not be in or visible from an area of great scenic value. These limitations are based on a similar CE promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 1.19) and DOC (Department Administrative Order 216-6, A-4), which relate to siting, construction, and operation of microwave and radio communication towers. The threshold height of 450 feet or less is consistent with a threshold of "over 450 feet in height" for a new or

existing antenna structure established by the Federal Communications Commission for an EA-level review (47 CFR 1.1307).

This proposed CE is intended to include numerous existing Agency CEs (see Table 3). Agency experience in implementing these projects has not resulted in significant environmental impacts. For this reason, the Agency proposes to continue to classify these actions as CEs. Examples include, but are not limited to:

- Group homes, detention facilities, nursing homes, or hospitals, providing a net increase in beds of not more than 25 percent or 25 beds, whichever is greater (§ 1940.311(b)(2)).
- Land clearing activity, funded as an independent action (similar to § 1940.311(c)(3), but less than 10 acres).
- New bulk commodity storage and associated handling facilities within existing fossil-fueled generating station boundaries for the purpose of co-firing bio-fuels and refuse derived fuels (§ 1794.21(b)(26)).
- Repair, rehabilitation, or restoration of water control, flood control, or water impoundment facilities, such as dams, dikes, levees, detention reservoirs, and drainage ditches, with minimal change in use, size, capacity, purpose, operation, location, or design from the original facility. (§ 1940.310(d)(5)).
- Installation or enlargement of irrigation facilities where the system is designed to irrigate no more than 80 acres (§ 1940.310(d)(6) and consistent with § 1940.311(c)(1), Class I EA for irrigation of more than 80 acres).
- Replacement or restoration of irrigation facilities with no or minimal change in use, size, capacity, or location from original facility (§ 1940.310(d)(7)).

The provisions of this proposed CE are also similar to existing CEs promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 1.15) and

DOC (Department Administrative Order 216–6, A–1 and A–2), which relate to the siting, construction, modification, minor renovations, and additions to buildings and roads within or contiguous to already developed or previously disturbed areas or which do not result in a change in functional use. These CEs do not impose an acreage limitation.

*Small-scale corridor development* (§ 1970.54(b)). The proposed CEs described in this paragraph apply to financial assistance for the following actions:

(1) Construction or repair of roads, streets, and sidewalks, including related structures such as curbs, gutters, storm drains, and bridges, in an existing right-of-way with minimal change in use, size, capacity, purpose or location from the original infrastructure. This proposed CE includes one existing Agency CE (see Table 3). The provisions of the proposed CE are also similar to existing CEs promulgated by DOC (Department Administrative Order 216–6, A–1) and BLM (Department of the Interior Departmental Manual 516, Chapter 11, E 13 and E 17), which relate to minor renovations and additions or upgrades to roads and existing rights-of-way.

(2) Improvement and expansion of existing water, waste water, and gas utility systems no greater than one mile out from currently served areas irrespective of the percent of increase in new capacity, or increasing capacity not more than 30 percent of the existing population [or providing capacity to serve no more than a 30 percent increase in the existing population]. This proposed CE includes three existing Agency CEs and one Class I EA (see Table 3). The provisions of the proposed CE are also similar to existing CEs promulgated by EPA (40 CFR 6.204(a)(1)(ii) and (iii)) and BLM (Department of the Interior Departmental Manual 516, Chapter 11, E 17), which relate to the minor upgrading or minor expansion of system capacity or rehabilitation of existing infrastructure systems. The proposed CE incorporates the existing Agency CEs with those promulgated by EPA because the two agencies often provide joint financing on the same proposals.

(3) Replacement of utility lines where road reconstruction undertaken by non-Agency applicants requires the relocation of lines either within or immediately adjacent to the new road easement or right-of-way. This proposed CE, which encompasses utilities such as water and sewer lines, includes an existing RUS CE (see Table 3).

(4) Construction of new distribution lines and associated facilities less than 69 kV. This proposed CE includes an existing RUS CE (see Table 3).

(5) Installation of telecommunications lines, cables, and related facilities. This proposed CE includes an existing RUS CE (see Table 3).

*Small scale energy proposals* (§ 1970.54(c)). For many years, the Agency has prepared EAs for small scale energy projects including renewable energy projects. All have resulted in a FONSI and have no potential for significant impact. For this reason, the Agency has concluded that these types of projects, with appropriate limitations, are appropriate for CEs. The Agency is also relying on the experience of other Federal agencies such as DOE who implement similar programs and have had similar experiences. The proposed CEs described in this paragraph apply to financial assistance for the following actions:

(1) Construction of electric power substations (including switching stations and support facilities) or modification of existing substations and support facilities. This proposed CE includes two existing RUS CEs (see Table 3), although the proposed CE does not include construction of electric power lines and associated distance or voltage thresholds.

The provisions of the proposed CE are also similar to an existing CE promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 4.11), which relates to construction and modification of electric power substations or interconnection facilities.

(2) Construction of electric transmission lines 10 miles in length or less, but not for the integration of major new generation resources into a bulk transmission system. This proposed CE includes one existing RUS CE (see Table 3), although the 25-mile threshold length included in § 1794.22(a)(1) has been changed to a 10-mile length threshold to be consistent with DOE. The latter is due to the fact that the Agency cooperates with DOE in the financing and permitting of multiple transmission projects and consistency is desirable. With respect to § 1794.22(a)(5), the portion of this existing CE involving more than 20 percent pole replacement will be considered the same as new construction and is partly captured under this proposed CE for new transmission lines 10 miles in length or less (see also § 1970.54(c)(3)). The provisions of the proposed CE are consistent with an existing CE promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 4.12), which

relates to the construction of electric powerlines 10 miles in length or less, or 20 miles in length or less within previously disturbed or developed powerline or pipeline rights-of-way.

(3) Reconstruction (upgrading or rebuilding) and/or minor relocation of existing electric transmission lines 20 miles in length or less to enhance environmental and land use values, for reliability or access improvement. Such actions include relocations to avoid right-of-way encroachments, resolve conflict with property development, accommodate road/highway construction, allow for the construction of facilities such as canals and pipelines, or reduce existing impacts to environmentally sensitive areas. This proposed CE includes an existing RUS CE (see Table 3). With respect to § 1794.22(a)(5), the portion of this existing CE involving less than 20 percent pole replacement is partly captured under this proposed CE for rebuilding existing lines less than 20 miles. The provisions of the proposed CE are consistent with a CE promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 4.13), which relates to the upgrading and rebuilding of existing powerlines 20 miles in length or less.

(4) Repowering or uprating modifications or expansion of an existing unit(s) up to 50 average MW at electric generating facilities in order to maintain or improve the efficiency, capacity, or energy output of the facility. Any air emissions from such activities must be within the limits of an existing air permit. This proposed CE includes an existing RUS CE (see Table 3).

(5) Installation of new generating units or replacement of existing generating units at an existing hydroelectric facility or dam which results in no change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All supporting facilities and new related electric transmission lines 10 miles in length or less are included. This proposed CE includes an existing RUS CE (see Table 3).

(6) Installation of a heat recovery steam generator and steam turbine with a rating of 200 average MW or less on an existing electric generation site for the purpose of combined cycle operations. All supporting facilities and new related electric transmission lines 10 miles in length or less are included. This proposed CE includes an existing RUS CE (see Table 3).

(7) Construction of small electric generating facilities (except geothermal and solar electric projects), including

those fueled with wind or biomass, capable of producing not more than 10 average MW. All supporting facilities and new related electric transmission lines 10 miles in length or less are included. This proposed CE is new (see Table 4). In addition to relying on Agency experience in preparing EA/FONSIs for these types of actions for many years, the provisions of the proposed CE are similar to two CEs recently promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 5.18 and B 5.20), which relate to the installation, modification, operation, and removal of commercially available wind turbines (generally not more than two) and small-scale biomass power plants (generally less than 10 average MW), each located within a previously disturbed or developed area.

(8) Geothermal electric projects developed on up to 10 acres of land and including installation of one geothermal well for the production of geothermal fluids for direct use application (such as space or water heating/cooling) or for power generation. All supporting facilities and new related electric transmission lines 10 miles in length or less are included. The proposed CE is new (see Table 4) and would include new programs to promote renewable energy conversions and energy efficiency improvements to existing facilities. The Agency has prepared EAs for these types of projects, all of which resulted in a FONSI. Thus, the Agency has concluded that these types of actions are appropriate for a CE. In addition, this proposed CE is similar to a CE recently promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 5.19) for the installation, modification, operation, and removal of commercially available small-scale ground source heat pumps to support operations in single facilities (such as a school or community center) or contiguous facilities (such as an office complex). In addition, EAs prepared by DOE and BLM for these types of actions (and larger) have routinely resulted in findings of no significant impact.

(9) Solar electric projects developed on up to 10 acres of land including all supporting facilities and new related electric transmission lines 10 miles in length or less. The proposed CE is new (see Table 4) and would cover new programs to promote renewable energy conversions and energy efficiency improvements to existing facilities. The 10-acre and 10-mile limitations are consistent with proposed § 1970.54(a) and with thresholds used in DOE CEs. The provisions of the proposed CE are similar to two CEs recently promulgated by DOE (10 CFR part 1021, Appendix B

to subpart D, B 5.16 and B 5.17), which relate to the installation, modification, operation, and removal of commercially available solar photovoltaic systems and small-scale solar thermal systems located on or contiguous to a building, and if located on land, generally comprising less than 10 acres within a previously disturbed or developed area. Based on the experience of the Agency and DOE, the Agency has determined that this proposed CE normally has no potential for significant environmental impacts.

(10) Distributed resources of any capacity located at or adjacent to an existing landfill site or wastewater treatment facility that is powered by refuse-derived fuel. All supporting facilities and new related electric transmission lines 10 miles in length or less are included. This proposed CE includes an existing RUS CE (see Table 3). In addition, the provisions of the proposed CE are similar to a CE recently promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 5.21), which relates to the installation, modification, operation, and removal of commercially available methane gas recovery and utilization system installed within a previously disturbed or developed area on or contiguous to an existing landfill or wastewater treatment plant. DOE has similarly recognized that these types of actions do not result in significant environmental impacts.

(11) Small conduit hydroelectric facilities having a total installed capacity of not more than 5 average MW using an existing conduit such as an irrigation ditch or pipe into which a turbine would be placed for the purpose of electric generation. All supporting facilities and new related electric transmission lines 10 miles in length or less are included. This is a new CE (see Table 4), although its provisions are similar to a CE promulgated by the Federal Energy Regulatory Commission (18 CFR 380.4(14)) for small conduit hydroelectric facilities, and a CE recently promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 5.24), which relates to the installation, modification, operation, and removal of commercially available small-scale drop-in, run-of-the-river hydroelectric systems.

(12) Modifications or enhancements to existing facilities or structures that would not substantially change the footprint or function of the facility or structure and that are undertaken for the purpose of improving energy efficiency, or promoting pollution prevention, safety, reliability and security. This includes, but is not limited to, retrofitting existing facilities to produce

biofuels, and replacing fossil fuels used to produce heat or power in biorefineries with renewable biomass. This also includes installation of fuel blender pumps and associated changes within an existing fuel facility. The proposed new CE (see Table 4) would cover new programs to promote renewable energy conversions and energy efficiency improvements to existing facilities. The provisions of the proposed CE are similar to existing CEs promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 5.2 and 6.8) and DOC (Department Administrative Order 216-6, A-1), which relate to the minor modifications to buildings that do not change functional use of the facility, and to equipment, existing pumps, and existing piping configurations conveying materials such as air, brine, carbon dioxide, geothermal system fluids, produced water, steam, and water). In particular, DOE CE B6.8 relates to minor modifications specifically for waste minimization and material reuse, including minor operational changes in existing facilities. In addition, the USDA Farm Service Agency (FSA) issued a final programmatic EIS for the Biomass Crop Assistance Program in June 2010. In the associated Record of Decision, FSA concluded that the collection, harvest, storage, and transportation of eligible materials for use in a biomass conversion facility and the establishment and production of eligible crops for conversion to bioenergy production would not have a significant environmental impact (75 FR 65995 (2010)).

CE for Multi-Tier Actions (§ 1970.55)

For a limited number of programs Congress directed the Agency to provide financial assistance to eligible recipients, including but not limited to: Intermediaries; community-based organizations, such as housing or community development non-profit organizations; rural electric cooperatives; or others organizations with similar financial arrangements who then, in turn, provide financial assistance to eligible recipients. The entities or organizations receiving the financial assistance from the Agency are considered “primary recipients.” As the direct recipients of this financial assistance, “primary recipients” then, in turn, provide financial assistance to other parties, referred to as “secondary recipients” or “ultimate recipients.” This series of transactions from the Agency to a primary recipient and subsequently to an ultimate recipient is termed a “multi-tiered action.”



Under this proposed section, the Agency's approval of financial assistance to a primary recipient of a multi-tier program when such financial assistance will be extended in the future to presently unknown, eligible secondary or ultimate recipients will be categorically excluded, if the primary recipient agrees in writing to comply with certain covenants regarding the use of the financial assistance by the ultimate recipients. However, notwithstanding the primary recipient's agreement regarding the ultimate use of the Agency's financial assistance, compliance with NEPA and other applicable environmental requirements remains the responsibility of the Agency and nothing in the proposed section is intended to delegate those responsibilities to a primary or ultimate recipient.

There are no analogous CEs in either of the existing rules. The Agency is proposing this CE because the initial approval of financial assistance to a primary recipient is an action that has no immediate environmental effect. Under § 1940.11(a)(3) one of the multi-tier programs that has been administered since the mid-1980's (RHS's Housing Preservation Grant Program) required the preparation of an EA for the initial approval and obligation of federal funds. The Agency has prepared EAs for these types of projects, all of which resulted in a FONSI. Thus, the Agency has concluded that these types of actions for all multi-tier programs are appropriate for a CE.

Because the specific type, location, and scope of all proposals to be funded by a primary recipient are not known at the time financial assistance is provided to a primary recipient, the environmental effects of these proposals are not known or analyzed at the time the financial assistance is provided. However, although all of the details of the proposals of potential secondary recipients may be unknown at the time

the financial assistance is provided to a primary recipient, the primary recipient is limited to making the financial assistance available to secondary recipients for the types of projects specified in the primary recipient's application.

Under this proposed CE, the primary recipient would screen all proposed uses of funds and determine if a categorical exclusion is appropriate pursuant to 7 CFR 1970.53 or 1970.54 and under the Agency's environmental policies and procedures when the specifics of a loan or grant to an ultimate recipient become known. If a proposal by an ultimate recipient is classified under § 1970.54, the primary recipient will either prepare the appropriate documentation or request additional environmental documentation from the ultimate recipient to ensure there are no extraordinary circumstances. If the ultimate recipient's proposal is classified under 7 CFR part 1970, subpart C or D, the primary recipient will seek the advice of the Agency and if necessary, the Agency will independently review and approve any EA or EIS that was required.

Primary recipients that fund projects without complying with the requirements of this proposed section would be subject to penalties, including withdrawal of Agency assistance, withdrawal of Agency authorizations, or suspension from participation in Agency programs. Despite the Primary recipient's responsibilities outlined in this part, the Agency maintains ultimate control and responsibility over the NEPA process through its oversight and review.

*C. Subpart C—Environmental Assessments*

General (§ 1970.101)

This proposed section describes the purpose of an EA and states that if, during the preparation of an EA, the

Agency determines that the proposal will have a potentially significant impact on the quality of the human environment, the Agency will prepare an EIS. This proposed section also describes the types of Agency actions for which an EA will typically be prepared.

The requirements in this proposed section are consistent with existing §§ 1940.311, 1940.312, 1794.23 through 1794.24, 1794.40, and 1794.50. However, the Agency is proposing some revisions, as described below.

The proposed rule would eliminate the distinction between Class I and Class II EAs (§§ 1940.311 and 1940.312) and EAs with and without scoping (§§ 1794.23 and 1794.24). This is consistent with the CEQ NEPA regulations, which do not recognize different classifications of EAs.

As discussed above in Section V.B, the Agency has determined that some proposed actions that require the preparation of a Class I EA under the existing regulations are more appropriately classified as CEs. This determination is based on the Agency's experience in preparing EAs for these small-scale projects, all of which resulted in a FONSI. These EAs and FONSIs demonstrate that, absent extraordinary circumstances and in most instances, these types of actions do not individually or cumulatively have a significant impact on the environment. For this reason, the Agency is proposing to include these types of actions as CEs.

Table 5 provides a summary of the Class I EA actions in § 1940.311 that the Agency proposes to treat as CEs under the proposed regulations and indicates the Class I EA actions that are not proposed for inclusion in 7 CFR part 1970 because they are no longer within the Agency's jurisdiction. These are addressed in more detail following Table 5. All other Class I EA actions in § 1940.311 will continue to require EAs under the proposed 7 CFR part 1970.

TABLE 5—TREATMENT OF CLASS I EA ACTIONS IN PROPOSED PART 1970

Class I EA actions (§ 1940.311)	Treatment in proposed rule (part 1970)
§ 1940.311(a)(1) .....	CE in § 1970.54(a).
§ 1940.311(a)(2) .....	CE in § 1970.54(a).
§ 1940.311(a)(3) .....	CE in § 1970.55.
§ 1940.311(b)(1) .....	CE in §§ 1970.54(a), 1970.54(b)(2).
§ 1940.311(b)(2) .....	CE in § 1970.54(a).
§ 1940.311(b)(3) .....	CE in § 1970.54(a).
§ 1940.311(b)(4) .....	EA required.
§ 1940.311(c)(1) .....	EA required.
§ 1940.311(c)(2) .....	Not included in proposed rule—no longer in Agency jurisdiction.
§ 1940.311(c)(3) .....	EA required.
§ 1940.311(c)(4) .....	CE in § 1970.53(d)(6).
§ 1940.311(c)(5) .....	Not included in proposed rule—no longer in Agency jurisdiction.
§ 1940.311(c)(6) .....	Not included in proposed rule—no longer in Agency jurisdiction.

TABLE 5—TREATMENT OF CLASS I EA ACTIONS IN PROPOSED PART 1970—Continued

Class I EA actions (§ 1940.311)	Treatment in proposed rule (part 1970)
§ 1940.311(c)(7) .....	CE under § 1970.54(a).
§ 1940.311(c)(8) .....	EA required.
§ 1940.311(d)(1) .....	Included as extraordinary circumstance under § 1970.52.
§ 1940.311(d)(2) .....	CE in §§ 1970.53(a)(5), 1970.53(c)(1).
§ 1940.311(d)(3) .....	CE in § 1970.53(a)(5).

In general, most of the actions that required a Class I EA under the existing regulations are included in proposed § 1970.54 as CEs for which an applicant must submit documentation (see Table 5). Such documentation would be similar to that which applicants must currently provide for a Class I EA, but the burden on Agency staff to prepare an EA would be significantly reduced.

The following sections describe how the existing Class I EAs in § 1940.311 are addressed in proposed § 1970.54:

*§ 1940.311(a)(1) Financial assistance for a multi-family housing project, including labor housing which comprises at least 5 units, but no more than 25 units.* This Class I EA action is reclassified as a CE with documentation in the proposed rule and is captured in § 1970.54(a)(1) Affordable Multi-family housing. The limitation for the proposed CE is now the size of the potentially affected area (less than 10 acres) rather than number of units.

*§ 1940.311(a)(2) Financial assistance for or the approval of a subdivision, as well as the expansion of an existing one which involves at least 5 lots but no more than 25 lots.* The agency no longer routinely conducts subdivision approvals, but still may approve lots. Lot approval is included in § 1970.54(a). The limitation for the proposed CE is now the size of the potentially affected area (less than 10 acres) rather than number of lots.

*§ 1940.311(a)(3) Financial assistance for a housing preservation grant.* As a multi-tier action, the approval of a housing preservation grant will be a CE under § 1970.55 and will not require documentation. However, the majority of subsequent actions are expected to be classified under §§ 1970.53 and 1970.54, where those classified under § 1970.54 would require documentation. This is based on Agency review and experience with the Housing Preservation Grant Program, and the existing regulation.

*§ 1940.311(b)(1) Financial assistance for water and waste disposal facilities and natural gas facilities that meet certain specified criteria.* This type of action is proposed for inclusion as a CE in the proposed rule and is captured in § 1970.54(a)(4) relating to utility

infrastructure and in § 1970.54(b)(2) relating to the improvement and expansion of existing water, wastewater, and gas utility systems. The limitations for the proposed CEs include the size of the potentially affected area (less than 10 acres under § 1970.54(a)), or related to specific distance and capacity thresholds (under § 1970.54(b)(2)), rather than discharge volumes and general boundary conditions as under the existing regulations. While the capacity threshold has changed from “no more than 20 percent” under 7 CFR part 1940 to “not more than 30 percent” as proposed under 7 CFR part 1970, this change is consistent with the threshold for an EA (i.e., more than a 30 percent increase) in existing § 1794.22(c)(4).

*§ 1940.311(b)(2) Financial assistance for group homes, detention facilities, nursing homes, or hospitals, providing a net increase in beds of not more than 25 percent or 25 beds, whichever is greater.* This type of action is captured in § 1970.54(a)(3), Community Facilities such as municipal buildings, libraries, security services, fire protection, schools, health and recreation facilities if less than 10 acres. The limitation for the proposed CE is now the size of the potentially affected area (less than 10 acres) rather than number of beds.

*§ 1940.311(b)(3) Financial assistance for the construction or expansion of facilities, such as fire stations, retail stores, libraries, outpatient medical facilities, service industries, in addition to manufacturing plants, office buildings, and wholesale industries that meet specified criteria.* This type of action is captured in § 1970.54(a)(3), Community Facilities such as municipal buildings, libraries, security services, fire protection, schools, health and recreation facilities if less than 10 acres. The limitation for the proposed CE is now the size of the potentially affected area (less than 10 acres) rather than the type of facility.

*§ 1940.311(c)(7) Financial assistance for the use of a farm or portion of a farm for recreational purposes or nonfarm enterprises utilizing no more than 10 acres, provided that no wetlands are affected. If wetlands are affected, the application will fall under Class II as*

*defined in § 1940.312 of this subpart.* This type of action, which is limited to no more than 10 acres in the proposed rule, is consistent with the 10-acre size limit placed on actions in proposed § 1970.54 and is captured in § 1970.54(a)(3), Community Facilities such as municipal buildings, libraries, security services, fire protection, schools, health and recreation facilities.

In other instances, however, proposed actions requiring a Class I EA under the existing regulations are proposed for inclusion as CEs that, in the proposed rule, will not require the applicant to submit environmental documentation (see Table 5). For these actions, burdens on both applicants and on Agency staff will be reduced as compared to the existing regulations. Based on past experience, the Agency has determined that the potential for extraordinary circumstances is low and that requiring applicants to submit environmental documentation is unnecessary. In addition, the proposed rule provides that the Agency may request additional environmental documentation from the applicant at any time, specifically if the Agency determines that extraordinary circumstances may exist (proposed § 1970.53).

The following sections indicate how the existing Class I EAs are addressed in proposed § 1970.53:

*§ 1940.311(c)(4) Financial assistance for the construction of energy producing facilities designed for on farm needs such as methane digesters and fuel alcohol production facilities;* This Class I EA action is captured in § 1970.53(d)(6).

*§ 1940.311(d)(2) Loan-closing and servicing activities, transfers, assumptions, subordinations, construction management activities, and amendments and revisions to all approved actions listed either in this section or equivalent in size or type to such actions and that alter the purpose, operation, location or design of the project from what was originally approved.* Loan-closing and servicing activities are captured in § 1970.53(a)(5), which provides that if “such [servicing] actions involve foreseeable future changes, the Agency will classify the

action according to this part and the appropriate level of environmental review will be prepared prior to the approval of such action." Transfers, assumptions, subordinations, and construction management activities are not included as separate CEs in the proposed rule. Rather, the Agency considers these actions to be included within the definition of "loan servicing." Amendments and revisions to all approved actions are captured in § 1970.53(c)(1).

§ 1940.311(d)(3) *The lease or disposal of real property by the Agency which meets either of two specified criteria, including whether the lease or disposal is controversial for environmental reasons.* Lease or disposal of real property is a CE in § 1940.310(e)(6) and is proposed for inclusion in § 1970.53(a)(5). This proposed CE includes a provision that specifies if "such [servicing] actions involve foreseeable future changes, the Agency will classify the action according to this part and the appropriate level of environmental review will be prepared prior to the approval of such action." The potential for environmental controversy is included as an extraordinary circumstance in § 1970.52.

The existing Class I EA regulations require an EA for any Federal action that is defined as a categorical exclusion but which is controversial for environmental reasons (§ 1940.311(d)(1)). In the proposed regulations, the Agency has included "environmental controversy" as an extraordinary circumstance that would cause a normally categorically excluded action to require the preparation of an EA (or if necessary an EIS).

Some Class I EA actions are not included in the proposed rule. Such actions are not included because these actions fall within the jurisdiction of the FSA and are not eligible for Agency financing. These are:

§ 1940.311(c)(2) *Financial assistance for the development of farm ponds or lakes more than 5 acres in size, but no more than 10 acres, provided that no wetlands are affected.*

§ 1940.311(c)(5) *Financial assistance for the conversion of more than 160 acres of pasture to agricultural production, but no more than 320 acres, provided that in a conversion to agricultural production no wetlands are affected, in which case the application will fall under Class II as defined in § 1940.312 of this subpart.*

§ 1940.311(c)(6) *Financial assistance to grazing associations.*

One existing Electric Program CE (§ 1794.22(a)(10)) will now require an

EA under the proposed rule. This action relates to the construction of new water supply wells not located within the boundaries of an existing well field or generating station site. Currently, it is a CE that would require the applicant to submit an ER as documentation. Given the level of documentation now required under the proposed rule (§ 1970.54), which is less than a full ER, and the potential for significant impacts on the public water supply (e.g., extensive drawdown from withdrawals) and on existing water quality (e.g., aquifer degradation), the Agency believes that an EA is more appropriate for the development of new commercial or industrial wells. Thus, under the proposed rule, this type of proposed action would require an EA. This approach is consistent with existing EA classes of action relating to wells in 7 CFR 1940.312 (Class II EAs) and with two proposed CEs in § 1970.53: § 1970.53(c)(5), for non-commercial (residential, farm/livestock) wells; and § 1970.53(c)(6), for modifications in an existing water well field, where no drawdown (other than immediate vicinity) or aquifer degradation would occur.

With respect to the Class II EA actions under § 1940.312, the following will either be eligible for a CE or require an EA under the proposed rule, depending on the size of the area affected:

§ 1940.312(a)(1) *Financial assistance for a multi-family housing project, including labor housing, which comprises more than 25 units.* Under the proposed rule, if such a facility would be 10 acres or less and there were no extraordinary circumstances, this action would be considered a CE under proposed § 1970.54(a)(1). The basis for CEs under proposed § 1970.54(a) is the size of the potentially affected area (less than 10 acres) rather than the number of units.

Finally, the following Class II EA actions are not proposed for inclusion in the proposed rule because these actions fall within the jurisdiction of the FSA and are not eligible for Agency financing:

§ 1940.312(c)(2) *Financial assistance for the development of farm ponds or lakes either larger than 10 acres in size or for any smaller size that would affect a wetland;*

§ 1940.312(c)(4) *Financial assistance for the construction or enlargement of aquaculture facilities;*

§ 1940.312(c)(5) *Financial assistance for the conversion of more than 320 acres of pasture to agricultural production or for any smaller conversion of pasture to agricultural production that affects a wetland;*

The remaining Class I and Class II EA actions in §§ 1940.311 and 1970.312 (except for those noted above), and all of the EAs listed in §§ 1794.23 and 1794.24, will continue to require EAs under the proposed 7 CFR part 1970 (see Table 5).

In addition to eliminating the distinction between different classes of EAs, the proposed rule would eliminate the descriptions of the types of actions that typically require the preparation of an EA. Instead, the proposed rule would require that an EA be prepared for all Agency actions that do not fall within the list of CEs in 7 CFR part 1970, subpart B or within the list of actions for which an EIS must be prepared in 7 CFR part 1970, subpart D. In addition, an EA (or an EIS if required) would be prepared for a normally categorically excluded action if there were extraordinary circumstances. The Agency determined that requiring the preparation of EAs for those applications for financial assistance that are not eligible for a CE, but for which an EIS is not necessarily required, will meet the requirements of NEPA and other applicable environmental requirements and provide certainty to Agency staff, applicants, and other interested parties.

Preparation of EAs (§ 1970.102)

This proposed section describes the required contents of an EA. It also describes how an EA is normally processed within the Agency, including the responsibilities of the Agency and the applicant. In sum, the proposed section provides for a single, streamlined process that all Agency programs will follow in preparing, considering, i.e., reviewing and accepting applicant provided documentation, and publishing EAs.

The proposed section is similar to the existing §§ 1940.318 and 1940.319 (Class II and Class I EAs respectively), although references to Farmers Home Administration forms have been removed as obsolete because the farm-related functions of the Agency were transferred to the FSA in 1995. In addition, the Agency believes that much of the information in these sections explain internal EA preparation procedures which are better placed in staff instruction.

Environmental Reports, under the existing RUS regulations, are prepared by applicants and normally serve as the EA following RUS review and approval. Information regarding the preparation of Environmental Reports in §§ 1794.41 and 1794.53 is not included in the proposed rule because such reports are specific to RUS. However applicant

documentation requirements are listed in §§ 1970.5, 1970.51, and 1970.102.

The Agency is proposing to require a 14- to 30-day public review and comment period for all EAs. While past Agency practice under 7 CFR part 1794 has been to allow a 30-day review period, the Agency determined that codifying the requirement is appropriate and that a 30-day comment period would not always be necessary. For example, a 14-day comment period could be appropriate for a proposed action with limited impacts in a small area for which there is no public concern. A large, complex proposal that has raised public concerns would warrant a 30-day comment period. CEQ regulations require some level of public involvement during the preparation of EAs (see Section IV.B.2.b, above). The Agency proposes to meet this standard by requiring EAs to be made available for public review and comment while maintaining flexibility and expediency in the EA process.

#### Supplementing EAs (§ 1970.103)

This proposed section is new and identifies the conditions under which a supplement to an EA will be required. There are no analogous sections in 7 CFR parts 1940 or 1794. The CEQ regulations describe requirements for supplementing EISs. The Agency has determined that it is good policy, and meets the letter and spirit of NEPA, to supplement an EA when changed circumstances warrant a re-evaluation of potential environmental impacts.

#### Finding of No Significant Impact (§ 1970.104)

This proposed section provides that the Agency may issue a FONSI only if the EA supports a finding that the proposed action will not have a significant impact on the human environment. This is the standard that is set forth in the CEQ NEPA regulations. If the EA does not support a FONSI, the Agency will proceed to prepare an EIS.

The proposed section also addresses what information the FONSI must include and requires that the Agency ensure that the applicant has committed to any mitigation necessary to support the FONSI and possesses the authority and ability to fulfill those commitments. If mitigation is needed to support a FONSI, mitigation must be a condition of financial assistance.

Although the existing Agency NEPA regulations discuss FONSI in various sections (§§ 1940.318, 1940.319, 1794.43 and 1794.54), the requirements contained in this proposed section have no analogous provisions in the existing

regulations. The proposed requirements are being added to clarify when a FONSI would be published and its required contents. The proposed requirement that the mitigation that is necessary to support a FONSI be a condition of financial assistance is being added in order to be consistent with recent CEQ guidance on mitigation and monitoring (*Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact*, January 14, 2011, as found at: [http://ceq.hss.doe.gov/current\\_developments/new\\_ceq\\_nepa\\_guidance.html](http://ceq.hss.doe.gov/current_developments/new_ceq_nepa_guidance.html)).

#### D. Subpart D—Environmental Impact Statements

##### General (§ 1970.151)

This proposed section describes the purpose of an EIS and lists six specific Agency actions for which an EIS will be required. The list is not exclusive; other Agency actions not listed may require the preparation of an EIS in certain circumstances. Failure to achieve compliance with this part will postpone further consideration of the applicant's proposal until such compliance is achieved or the applicant withdraws the application. If compliance is not achieved, the Agency will deny the request for financial assistance.

The specific Agency actions listed in the proposed section are similar to those in § 1794.25. However, in § 1794.25, water and waste and telecommunications programs are identified as actions not normally requiring the preparation of an EIS, although the Agency's environmental review process is used to identify those proposed actions for which the preparation of an EIS is necessary. Based on Agency experience, these actions have not typically required the preparation of an EIS. For this reason, the Agency is proposing that these types of actions should be the subject of EAs.

The inclusion of a specific list of actions in this proposed section differs significantly from § 1940.33, which indicates that a detailed listing cannot be identified given the variability of the types and locations of actions taken by the Agency. Rather, the existing regulation relies on the EA process to identify, on a case-by-case basis, those actions for which an EIS is necessary, and includes a detailed list of actions in §§ 1940.311 and 1940.312 for Class I and Class II EA actions.

In its proposed NEPA rule, the Agency has determined that a better approach is to specifically identify those actions that are eligible for a CE (see subpart B) and those that require the

preparation of an EIS. All other actions will require the preparation of an EA (see subpart C) to determine whether the potential environmental impacts may be significant. The proposed approach gives Agency staff and applicants a clear understanding of the type of NEPA review that will be required for particular proposals, with all others requiring the preparation of an EA.

With respect to the proposed Agency actions identified in this proposed section, the basis for their inclusion is as follows:

(1) Proposals for which an EA was initially prepared and that may result in significant impacts that cannot be mitigated: this is consistent with the CEQ regulations that require the preparation of an EIS if an agency, after preparing an EA, concludes that the potential environmental impacts may be significant.

(2) Siting, construction (or expansion), and decommissioning of major treatment, storage, and disposal facilities for hazardous wastes as designated in 40 CFR part 261: This is consistent with DOE Appendix D to subpart D of part 1021, D11.

(3) Proposals that change or convert the land use of parcels greater than 640 acres in area: (DOI DM 516 11.8 B7)

(4) New electric generating facilities other than gas-fired combustion turbines of more than 50 average MW output, and all new associated electric transmission facilities shall be covered in an EIS. This is currently included in § 1794.25(a)(1).

(5) New mining operations when the applicant has effective control (i.e., applicant's dedicated mine or purchase of a substantial portion of the mining equipment): This is currently included in § 1794.25(a)(2).

(6) Agency proposals for legislation that may have a significant environmental impact: This is consistent with the CEQ NEPA regulations (40 CFR 1506.8).

#### EIS Funding and Professional Services (§ 1970.152)

This proposed section provides that, unless otherwise approved by the Agency, an applicant must fund the preparation of an EIS and any supplemental documentation prepared in support of an applicant's proposal. The section provides that it is the Agency's responsibility to determine the scope and content of the NEPA documents to be prepared by any third-party contractors.

As indicated in the CEQ regulations, an EIS may be prepared by a contractor selected by the Agency and paid by the applicant. However, the Agency must

exercise control over the scope, content, and development of the EIS (40 CFR 1506.5(c)). The selected contractor is required to execute the necessary disclosures, indicating that the contractor has no interest in the results of the EIS.

Under the proposed third-party contracting arrangement, the applicant is required to fund the preparation of the EIS by the contractor that the Agency selects. The applicant is responsible for procurement and contracting while the Agency is responsible for directing the work of the contractor and for determining the scope and content of the EIS.

As is the case with many Federal agencies entering into third-party contracting agreements, such an arrangement is typically described in an agreement among the Agency, the EIS contractor, and the applicant. The proposed rule provides that these agreements will describe each party's role and responsibilities during the EIS process. Further, the proposed rule requires that a disclosure statement be prepared by the Agency and executed by each third-party contractor performing environmental services. This disclosure statement requires the contractor to certify that it has no interest in the outcome of the EIS.

Although the funding and contractual responsibilities will be required of applicants, the proposed rule will not change the current Agency responsibilities for EIS preparation. The Agency would still be responsible for selecting the EIS contractor and for the scope and content of the EIS prepared by the EIS contractor. The Agency would also prepare the scope of work and technical evaluation criteria for use in the solicitation package for evaluating contractor submittals for the preparation of the EIS.

Currently, existing § 1940.336(d) authorizes the Agency to secure outside professional services to assist in completing EISs in a direct Federal procurement in accordance with the Federal Acquisition Regulations. However, such regulation contains no provision requiring applicants to fund those professional services. Because the Federal procurement process can be lengthy and create burdens on Agency administrative staff, this section has been proposed to transfer the EIS procurement and funding burden to applicants to reduce the Agency's burden and costs.

Section 18 of the Rural Electrification Act of 1936, as amended (the RE Act), and existing 7 CFR part 1789 allow applicants under the RE Act to fund the preparation of an EIS by a third-party

contractor, if the applicant elects to do so. However, unlike under the proposed § 1970.152, a consultant hired under Section 18 of the RE Act is the client of the Agency, not the client of the applicant. This proposed section would not change the current practice of permitting an Agency acting under Section 18 of the RE Act and 7 CFR part 1789 from using a consultant funded by an applicant who consents to paying for such consultant.

#### Notice of Intent and Scoping (§ 1970.153)

This proposed section requires the Agency to publish a Notice of Intent (NOI) in the **Federal Register** that an EIS will be prepared and that one or more scoping meetings may be held. In addition, the applicant is required to publish a similar notice in at least one newspaper of local circulation, or provide similar information through other distribution methods as approved by the Agency.

The proposed section describes the content of the NOI and the scoping activities that the Agency will undertake, such as informing Federal, state, and local agencies and tribes of the proposal.

The proposed section primarily consolidates requirements in the existing §§ 1940.320(c), 1940.331(b), 1794.51, and 1794.52. Much of the information provided in § 1794.52 relating to scoping meetings has been included in § 1970.14 on public involvement. The Agency has also determined that much of the detailed information pertaining to the scoping process and public notice requirements found in 7 CFR part 1940 outline internal procedures and are not included in the proposed rule. To avoid redundancy, the Agency is also proposing to remove existing provisions that merely restate CEQ regulations.

#### Preparation of the EIS (§ 1970.154)

This proposed section provides that EISs will be prepared in accordance with the format outlined in the CEQ NEPA-implementing regulations using an interdisciplinary approach. The proposed section describes the process the Agency will use to file the draft and final EISs with EPA's Office of Federal Activities, publish a Notice of Availability of the draft and final EISs in the **Federal Register**, consider public comments received on the draft EIS, and respond to public comments in the final EIS. It also identifies applicant responsibilities for publishing announcements and support in responding to comments.

The proposed section primarily consolidates requirements in the existing §§ 1940.320 and 1794.61. In addition, some portions of § 1970.320 are not included in this proposed section because they are either included elsewhere in the proposed rule (Responsibility in § 1940.320(a) and Scoping process in § 1940.320(c)), or refer to internal procedures that are better suited to staff instruction (Organizing the EIS process in § 1940.329(b)).

#### Supplementing EISs (§ 1970.155)

This proposed section provides that a supplement to a draft or final EIS will be announced, prepared, and circulated in the same manner (exclusive of meetings held during the scoping process) as a draft and final EIS. The proposed section also describes the circumstances in which a supplemental EIS will be prepared and provides that the Agency will publish an NOI to prepare a supplement to a draft or final EIS.

The proposed section consolidates and revises requirements in the existing §§ 1940.323 and 1794.62. The proposed section is consistent with § 1940.323, although the details found in § 1970.323(b), (c) and (d) relating to changes in circumstance where a Class II EA may be prepared, coordination between the preparer and approving official, and other internal procedures and are not included in the proposed rule. Reference to an information supplement (§ 1794.62(c)) is not included in the proposed regulation because it is specific to RUS and internal procedure.

#### Record of Decision (§ 1970.156)

This proposed section provides a definition of the Record of Decision (ROD) and provides a reference to 40 CFR 1505.2 that describes the contents of a ROD. Notices informing the public of the availability of the ROD will be published in the **Federal Register**. The ROD may be signed no sooner than 30 days after the publication of EPA's Notice of Availability of the final EIS in the **Federal Register**.

The proposed section consolidates requirements in the existing §§ 1940.322 and 1794.63. The proposed section expands the existing regulations to address requirements related to the publication of a ROD. These requirements were added to clarify the Agency's environmental review process and to that ensure the Agency's regulations would be consistent with CEQ regulations (40 CFR 1506.10).

**Executive Order 12866**

This proposed rule has been reviewed under Executive Order (EO) 12866 and has been determined to be not significant by the Office of Management and Budget. The EO defines a “significant regulatory action” as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this EO.

The Agency determined that this regulation involves combining two existing intra-Agency regulations that supplement the NEPA procedures of the Council on Environmental Quality and the NHPA procedures of the Council on Historic Preservation that are established bodies of technical regulations which the Agency must necessarily update routinely to keep the regulations operationally current. The Agency has concluded that the net effect of the rule will be beneficial due to the streamlining and updated adherence to statutes and, therefore, does not warrant preparation of a regulatory evaluation as the anticipated impact is positive.

**Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act 1995 (UMRA) of Public Law 104–4 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed rule would consolidate and update the Agency’s existing rules governing compliance with NEPA to better align the Agency’s regulations, particularly its categorical exclusions, with its current activities and recent experiences, and update the provisions with respect to current programs and regulatory requirements. The proposed rule would result in no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of \$100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

**National Environmental Policy Act**

In this rule, the Agency proposes amendments that modify and clarify procedures for considering the environmental effects of the Agency’s actions within the agencies’ decision making process, thereby enhancing compliance with the letter and spirit of NEPA. The Agency has reviewed 7 CFR part 1940, subpart G, “Environmental Program” and part 1794, “Environmental Policies and Procedures” and determined that this rule qualifies for categorical exclusion (CE) under 7 CFR 1940.310(e)(3) and 7 CFR 1794.21(a)(1), because it is a strictly procedural rulemaking and no extraordinary circumstances exist that require further environmental analysis. Therefore, the Agency has determined that promulgation of this rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS).

**Executive Order 12988, Civil Justice Reform**

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the Department of Agriculture’s National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

**Executive Order 13132, Federalism**

The Agency has examined this proposed rule and determined, under

E.O. 13132, “Federalism,” that this does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this proposed rule would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by E.O. 13132.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601–602) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, or any other statute, unless the Agency certifies that the rule will not have an economically significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

In compliance with the RFA, the Agency has determined that this proposed rule will not have a significant economic impact on a substantial number of these small entities for the reasons explained below. Consequently, the Agency has not prepared a regulatory flexibility analysis. This determination is based on the purpose of this regulation, which is to streamline the environmental review for proposed actions, resulting in a decrease in the burdens associated with carrying out such reviews. The estimated number of applications to be submitted to Agency for all programs during the fiscal years 2012 through 2014 is an average of 120,283 applications per year. Of that total, some 89% are classified as private individuals, 4% are classified as private, non-individuals, and 7% are classified as State, local, and Tribal governments. Of the 4% classified as private, non-individuals, some 80%, or 3,845 applicants would be classified as small business entities affected by the proposed 1970 regulations. However, the proposed revisions included in this rule are expected to reduce the aggregate amount of environmental documentation required from applicants due primarily to decreased RUS CE documentation requirements and decreased numbers of EAs required for all programs. This results from: (1) Proposed new CEs based upon the Agency’s extensive experience over many years under both existing Agency NEPA rules in completing EAs for those actions resulting in findings of no

significant effect, and (2) reduction in the amount of information required under the RUS existing NEPA rule by applicants for CEs. In addition, the only impacts are on those who choose to participate in Agency programs, whereby small entity applicants will not be affected to a greater extent than individuals or large entity applicants.

**Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use**

The Agency analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Agency has not designated it as a significant energy action and

therefore, does not require a Statement of Energy Effects under Executive Order 13211.

**Executive Order 12372, Intergovernmental Review of Federal Programs**

This rule is not subject to the provisions of E.O. 12372, which require intergovernmental consultation with State and local officials, because this rule provides general guidance on NEPA and related environmental reviews of applicants’ proposals. Applications for Agency programs will be reviewed individually under E.O. 12372 as required by program procedures.

**Executive Order 13175, Consultation and Coordination With Indian Tribal Governments**

The Agency has determined that this proposed rule does have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal

Government and Indian tribes. Thus, this rule is subject to the requirements of Executive Order 13175.

Consequently, USDA will host a series of webinars and toll-free teleconferences based tribal consultation sessions that will be scheduled concurrently with the comment period of this proposed rule. The Agency believes this is the most cost effective way to consult with tribes on this rule and will allow maximum participation from tribal leaders or their designees.

Additionally, the Agency will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule. The policies contained in this rule do not have implications that preempt Tribal law.

**Programs Affected**

The Agency’s programs affected by this proposed rulemaking are shown in the Catalog of Federal Domestic Assistance (CFDA) with numbers as indicated:

CFDA No.	Program title
10.350	Technical Assistance to Cooperatives.
10.352	Value-Added Producer Grants.
10.405	Farm Labor Housing Loans and Grants.
10.411	Rural Housing Site Loans and Self-Help Housing Land Development Loans.
10.415	Rural Rental Housing Loans.
10.420	Rural Self-Help Housing Technical Assistance.
10.427	Rural Rental Assistance Payments.
10.433	Rural Housing Preservation Grants.
10.441	Technical and Supervisory Assistance Grants.
10.442	Housing Application Packaging Grants.
10.446	Rural Community Development Initiative.
10.760	Water and Waste Disposal Systems for Rural Communities.
10.761	Technical Assistance and Training Grants.
10.762	Solid Waste Management Grants.
10.763	Emergency Community Water Assistance Grants.
10.766	Community Facilities Loans and Grants.
10.767	Intermediary Relending Program.
10.768	Business and Industry Loans.
10.769	Rural Business Enterprise Grants.
10.770	Water and Waste Disposal Loans and Grants (Section 306C).
10.771	Rural Cooperative Development Grants.
10.773	Rural Business Opportunity Grants.
10.781	Water and Waste Disposal Systems for Rural Communities—ARRA.
10.788	Very Low to Moderate Income Housing Loans—Direct.
10.789	Very Low to Moderate Income Housing Loans—Guaranteed.
10.850	Rural Electrification Loans and loan guarantees.
10.851	Rural Telephone Loans and Loan guarantees.
10.854	Rural Economic Development Loans and Grants.
10.855	Distance Learning and Telemedicine Loans and Grants.
10.856	1890 Land Grant Institutions Rural Entrepreneurial Outreach Program.
10.857	State Bulk Fuel Revolving Fund Grants.
10.858	RUS Denali Commission Grants and Loans.
10.859	Assistance to High Energy Cost-Rural Communities.
10.861	Public Television Station Digital Transition Grant Program.
10.863	Community Connect Grant Program.
10.864	Grant Program to Establish a Fund for Financing Water and Wastewater Projects.
10.886	Rural Broadband Access Loans and Loan Guarantees.

All active CDFA programs can be found at [www.cfda.gov](http://www.cfda.gov) under Department of Agriculture, Rural Development. Programs not listed in this section or not listed on the CDFA Web site but are still being serviced by the Agency will nevertheless be covered by the requirements of this action.

### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Agency will seek OMB approval of the reporting and recordkeeping requirements contained in this proposed rule and hereby opens a 60-day public comment period.

*Title:* Environmental Policies and Procedures.

*OMB Number:* 0575-AC56.

*Type of Request:* New collection.

*Abstract:* consists of the Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service, hereafter referred as the Agency. The Agency is consolidating, simplifying, and updating the different Agency environmental requirements into common environmental policies and procedures. The proposed rule, 7 CFR part 1970, Subparts A through D, will replace 7 CFR part 1794 (the current RUS Environmental Policies and Procedures) and 7 CFR part 1940-G, Environmental Program (the current RHS/RBS environmental regulation). The revised and consolidated policies and procedures will implement the National Environmental Policy Act (NEPA), other applicable environmental requirements, and supplement the Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of NEPA. This action is taken to improve both the efficiency and the effectiveness of the Agency's environmental review processes.

The information required under the proposed rule is similar to much of the information currently being required under the two existing regulations. Under these regulations, the current information being collected is approved under OMB control numbers 0572-0117 and 0575-0094. The proposed rule, however, is changing the level of information required from lenders or borrowers, depending upon the level of environmental review determined for a specific project, or category of projects.

Proposed § 1970.54 defines as categorically excluded for NEPA review purposes proposals that are smaller scale in nature, but requires applicants to provide sufficient information to determine there are no extraordinary circumstances that would disqualify the proposal from being considered a CE.

Proposed § 1970.55 establishes as CEs Agency actions related to intermediaries. It requires applicants to provide sufficient information to determine there are no extraordinary circumstances that would disqualify the proposal from being considered a CE.

Proposed §§ 1970.101 and 102 establish and define Agency actions that would ordinarily require NEPA review on the level of an EA. It provides the requirements that pertain to the circumstances, preparation, review, and approval processes for EAs. The Agency will require an applicant to prepare an EA for those proposals which normally require the services of a design professional. In addition, these sections require applicants to provide site-specific environmental information on the proposed project, information on alternatives to the proposed project, if applicable, and to describe any mitigation actions proposed for the project. Applicants are also required to prepare and publish public notices to inform the public and other interested parties of the availability of the EA for review and comment, and provide all public comments and responses to the Agency, as appropriate.

Proposed § 1970.103 establishes a process for supplementing existing EAs, as needed. It requires applicants to provide any new information needed to supplement an existing EA in light of changes to the proposal.

Proposed § 1970.104 provides that the Agency may issue a Finding of No Significant Impact (FONSI), when the EA supports a finding that the proposed action will not have a significant effect on the human environment. The environmental review process for an EA is complete when a FONSI is issued. This section requires an applicant to prepare and publish public notices to inform the public and other interested parties of the availability of the FONSI.

Proposed § 1970.151 sets forth those actions that require the preparation of an Environmental Impact Statement (EIS).

Proposed § 1970.152 requires applicants to fund the preparation of an EIS, and provides for selecting and procuring environmental professional services to prepare an EIS. It expressly provides that the Agency may use consultants procured by applicants as approved by the Agency.

Proposed § 1970.153 requires applicants to publish a Notice of Intent to prepare an EIS and to support the Agency's scoping process.

Proposed § 1970.154 establishes the process for preparing an EIS and requires the applicant to publish public notices announcing the availability of

the EIS, and to support the Agency in responding to all public comments.

Proposed § 1970.155 establishes Agency policy for Supplemental EIS's. It requires the applicant to provide information on any substantial change in its proposal and to notify the Agency when there is new environmental information relevant to the proposed action that would affect the EIS.

Proposed § 1970.155 establishes a process to prepare a Record of Decision (ROD) for all EISs and requires an applicant to publish public notices on the availability of the ROD.

The information requirements contained in the proposed rule require lenders and applicants, as applicable, to provide the Agency with environmental information. This information is vital to the Agency's ability to fulfill its responsibilities and ensure compliance under NEPA and other applicable environmental laws, regulations, and executive orders.

The following estimates are based on the predicted average burden over the first three years the program is in place.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 92 hours per response.

*Respondents:* Rural developers, farmers and ranchers, rural businesses, public bodies, local governments, lenders.

*Estimated Number of Respondents:* 4,429.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Number of Responses:* 4,429.

*Estimated Total Annual Burden (hours) on Respondents:* 407,062.

Copies of this information collection may be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250-0742 or by calling (202) 692-0043.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the new Agency estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of



appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this proposed rule will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

#### **Review Under E-Government Act Compliance**

The Agency is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### **List of Subjects**

##### *7 CFR Part 1703*

Community development, Grant programs—education, Grant programs—health, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

##### *7 CFR Part 1709*

Administrative practice and procedure, Electric utilities, Grant programs—energy, Rural areas.

##### *7 CFR Part 1710*

Electric power, Electric power rates, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

##### *7 CFR Part 1717*

Administrative practice and procedure, Electric power, Electric utilities, Intergovernmental relations, Investments, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

##### *7 CFR Part 1720*

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

##### *7 CFR Part 1721*

Electric power, Loan programs—energy, Rural areas.

##### *7 CFR Part 1724*

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

##### *7 CFR Part 1726*

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

##### *7 CFR Part 1737*

Loan programs—communication, Reporting and recordkeeping requirements, Rural areas.

##### *7 CFR Part 1738*

Broadband, Loan programs—communications, Rural areas, Telecommunications, Telephone.

##### *7 CFR Part 1739*

Broadband, Grant programs—communications, Rural areas, Telecommunications, Telephone.

##### *7 CFR Part 1740*

Communications, Grant programs—digital televisions, Rural areas, Television.

##### *7 CFR Part 1753*

Communications equipment, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

##### *7 CFR Part 1774*

Community development, Grant programs, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply.

##### *7 CFR Part 1775*

Business and industry, Community development, Community facilities, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

##### *7 CFR Part 1779*

Loan programs—housing and community development, Rural areas, Waste treatment and disposal, Water supply.

##### *7 CFR Part 1780*

Community development, Community facilities, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

##### *7 CFR Part 1781*

Community development, Community facilities, Loan programs—

housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

##### *7 CFR Part 1782*

Accounting, Appeal procedures, Auditing, Debts, Delinquency, Grant programs—agriculture, Insurance, Loan programs—agriculture, Reporting and recordkeeping requirements.

##### *7 CFR Part 1794*

Environmental Impact Statements.

##### *7 CFR Part 1924*

Agriculture, Construction management, Construction and repair, Energy Conservation, Housing, Housing Standards, Loan programs—agriculture, Low and moderate income housing, Rural housing.

##### *7 CFR Part 1940*

Administrative practice and procedure, Agriculture, Grant programs—housing and community development, Loan programs—agriculture.

##### *7 CFR Part 1942*

Business and industry, Community development, Community facilities, Grant programs—housing and community development, Industrial park, Loan programs—housing and community development, Loan security, Rural areas, Waste treatment and disposal—domestic, Water supply—domestic.

##### *7 CFR Part 1944*

Administrative practice and procedure, Grant programs—housing and community development, Home improvement, Loan programs—housing and community development, Migrant labor, Nonprofit organizations, Reporting and recordkeeping requirements, Rural housing.

##### *7 CFR Part 1948*

Business and industry, Coal, Community development, Community facilities, Energy, Grant programs—housing and community development, Housing, Planning, Rural areas, Transportation.

##### *7 CFR Part 1951*

Accounting servicing, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

##### *7 CFR Part 1955*

Government acquired property, Government property management, Sale

of government acquired property, Surplus government property.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—agriculture, Rural areas.

7 CFR Part 1980

Home improvement, Loan programs—rural development assistance, Loan programs—housing and community development, Mortgage insurance, Mortgages, Rural areas.

7 CFR Part 3550

Administrative practice and procedure, Conflict of interests, Environmental impact statements, Equal credit opportunity, Fair housing, Grant programs—housing and community development, Housing.

7 CFR Part 3560

Accounting, Administrative practice and procedure, Aged, Conflict of interests, Government property management, Grant programs—housing and community development, Insurance, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 3565

Conflict of interests, Credit, Environmental impact statements, Fair housing, Government procurement, Guaranteed loans, Hearing and appeal procedures, Housing standards, Lobbying, Low and moderate income housing, Manufactured homes, Mortgages.

7 CFR Part 3570

Accounting, Account servicing, Administrative practice and procedure, Conflicts of interests, Debt restructuring, Environmental impact statements, Foreclosure, Fair Housing, Government property management, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Sale of government acquired property, Subsidies.

7 CFR Part 3575

Community facilities, Guaranteed loans, Loan programs.

7 CFR Part 4274

Community development, Economic Development, Loan programs—business, Rural areas.

7 CFR Part 4279

Loan programs—business and industry, Loan Programs—rural development assistance, Rural areas.

7 CFR Part 4280

Direct loan programs, Economic development, Energy, Energy efficiency improvements, Grant programs, Guaranteed loan programs, Loan programs—business and industry, Renewable energy systems, Rural areas.

7 CFR Part 4284

Business and industry, Economic development, Community development, Community facilities, Grant programs—Housing and community development, Loan programs—Housing and community development, Loan security, Rural areas.

7 CFR Part 4287

Loan Programs—Business and industry, Loan Programs—Rural development assistance, Rural areas.

For the reasons set forth in the preamble, chapters XVII, XVIII, XXXV and XLII of Subtitle B, title 7, Code of Federal Regulations are proposed to be amended as follows:

Subtitle B—Regulations of the Department of Agriculture

CHAPTER XVII—RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 1703—RURAL DEVELOPMENT

■ 1. The authority citation for part 1703 continues to read as follows:

Authority: 7 U.S.C. 901 et seq. and 950aaa et seq.

Subpart E—[AMENDED]

■ 2. Amend § 1703.125 by revising paragraph (j) to read as follows:

§ 1703.125 Completed application.

\* \* \* \* \*

(j) Environmental impact and historic preservation. The applicant must provide details of the project’s impact on the environment and historic preservation, in accordance with 7 CFR part 1970, “Environmental Policies and Procedures,” which contains the Agency’s policies and procedures for implementing a variety of Federal statutes, regulations, and Executive orders generally pertaining to the protection of the quality of the human environment. The application must contain a separate section entitled “Environmental Impact of the Project.”

\* \* \* \* \*

Subpart F—[AMENDED]

■ 3. Amend § 1703.134 by revising paragraph (h) to read as follows:

§ 1703.134 Completed application.

\* \* \* \* \*

(h) Environmental impact and historic preservation. The applicant must provide details of the project’s impact on the environment and historic preservation, in accordance with 7 CFR part 1970, “Environmental Policies and Procedures,” which contains the Agency’s policies and procedures for implementing a variety of Federal statutes, regulations, and Executive orders generally pertaining to the protection of the quality of the human environment. The application must contain a separate section entitled “Environmental Impact of the Project.”

\* \* \* \* \*

Subpart G—[AMENDED]

■ 4. Amend § 1703.144 by revising paragraph (h) to read as follows:

§ 1703.144 Completed application.

\* \* \* \* \*

(h) Environmental impact and historic preservation. The applicant must provide details of the project’s impact on the environment and historic preservation, in accordance with 7 CFR part 1970, “Environmental Policies and Procedures,” which contains the Agency’s policies and procedures for implementing a variety of Federal statutes, regulations, and Executive orders generally pertaining to the protection of the quality of the human environment. The application must contain a separate section entitled “Environmental Impact of the Project.”

\* \* \* \* \*

PART 1709—ASSISTANCE TO HIGH ENERGY COST COMMUNITIES

■ 5. The authority citation for part 1709 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 901 et seq.

Subpart A—[AMENDED]

■ 6. Amend § 1709.17 by revising paragraphs (a) and (c) to read as follows:

§ 1709.17 Environmental review.

(a) All grants made under this subpart are subject to the requirements of 7 CFR part 1970, “Environmental Policies and Procedures.”

\* \* \* \* \*

(c) Projects that are selected for grant awards by the Administrator will be reviewed by the Agency in accordance with 7 CFR part 1970, “Environmental

Policies and Procedures,” prior to final award approval. The Agency may require the selected applicant to submit additional information, as may be required, concerning the proposed project in order to complete the required reviews and to develop any project-specific conditions for the final grant agreement.

**Subpart B—[AMENDED]**

■ 7. Amend § 1709.117 by revising paragraph (b)(12) to read as follows:

**§ 1709.117 Application requirements.**

(b) \* \* \*  
 (12) *Environmental information.* The application must include information about project characteristics and site specific conditions that may involve environmental, historic preservation and other resource issues. This information must be presented in sufficient detail so as to facilitate the Agency’s identification of projects that may require additional environmental review in accordance with 7 CFR part 1700, “Environmental Policies and Procedures,” before a final grant award can be approved.

■ 8. Amend § 1709.124 by revising paragraph (a) to read as follows:

**§ 1709.124 Grant award procedures.**  
 (a) *Notification of applicants.* The Agency will notify all applicants in writing whether they have been selected for a grant award. Applicants that have been selected as finalists for a competitive grant award will be notified in writing of their selection and advised that the Agency may request additional information in order to complete the required environmental review in accordance with 7 CFR part 1700, “Environmental Policies and Procedures,” and to meet other pre-award conditions.

**PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES**

■ 9. The authority citation for part 1710 continues to read as follows:  
**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

**Subpart C—[AMENDED]**

■ 10. Revise § 1710.117 to read as follows:

**§ 1710.117 Environmental considerations.**

Borrowers are required to comply with 7 CFR part 1970, “Environmental

Policies and Procedures” and other applicable environmental laws, regulations and Executive orders.

**Subpart D—[AMENDED]**

■ 11. Amend § 1710.152 by revising paragraph (d) to read as follows:

**§ 1710.152 Primary support documents.**

(d) *Environmental Information.* This documentation is used to determine what effect the construction of the facilities included in the construction work plan will have on the environment. A borrower must follow the policy and procedural requirements set forth in 7 CFR part 1970, “Environmental Policies and Procedures.”

**Subpart F—[AMENDED]**

■ 12. Amend § 1710.250 by revising paragraph (i) to read as follows:

**§ 1710.250 General.**

(i) A borrower’s CWP or special engineering studies must be supported by the appropriate level of environmental review documentation, as set forth in 7 CFR part 1970, “Environmental Policies and Procedures.”

**Subpart I—[AMENDED]**

■ 13. Amend § 1710.401 by revising paragraph (c)(2)(iii) to read as follows:

**§ 1710.401 Loan application documents.**

(c) \* \* \*  
 (2) \* \* \*  
 (iii) Environmental documentation in accordance with 7 CFR part 1970, “Environmental Policies and Procedures”;

**PART 1717-POST—LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS**

■ 14. The authority citation for part 1717 continues to read as follows:  
**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

**Subpart R—[AMENDED]**

■ 15. Amend § 1717.850 by revising paragraph (d) to read as follows:

**§ 1717.850 General.**

(d) *Environmental considerations.* The environmental requirements of 7

CFR part 1970, “Environmental Policies and Procedures,” apply to applications for lien accommodations, subordinations, and lien releases.

■ 16. Amend § 1717.855 by revising paragraph (f) to read as follows:

**§ 1717.855 Application Contents: Advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities and certain other community infrastructure.**

(f) Environmental documentation, in accordance with 7 CFR part 1970, “Environmental Policies and Procedures;”

**PART 1720—GUARANTEES FOR BONDS AND NOTES ISSUED FOR ELECTRIFICATION OR TELEPHONE PURPOSES**

■ 17. The authority citation for part 1720 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*; 7 U.S.C. 940C.

■ 18. Add § 1720.16 as follows:

**§ 1720.16 Environmental review.**

All guarantees made under this subpart are subject to the requirements of 7 CFR part 1970, “Environmental Policies and Procedures.”

**PART 1721-POST—LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS**

■ 19. The authority citation for part 1721 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*; 1921 *et seq.*; and 6941 *et seq.*

**Subpart A—[AMENDED]**

■ 20. Amend § 1721.1 by revising paragraph (c) introductory text to read as follows:

**§ 1721.1 Advances.**

(c) *Certification.* Pursuant to the applicable provisions of the RUS loan contract, borrowers must certify with each request for funds to be approved for advance that such funds are for projects in compliance with this section and must also provide for those that cost in excess of \$100,000, a contract or work order number as applicable and a CWP cross-reference project coded identification number.

**PART 1724—ELECTRIC ENGINEERING, ARCHITECTURAL SERVICES AND DESIGN POLICIES AND PROCEDURES**

■ 21. The authority citation for part 1724 continues to read as follows:

*Authority:* 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

**Subpart A—[AMENDED]**

■ 22. Revise § 1724.9 to read as follows:

**§ 1724.9 Environmental compliance.**

Borrowers must comply with the requirements of 7 CFR part 1970, “Environmental Policies and Procedures.”

**PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES**

■ 23. The authority citation for part 1726 continues to read as follows:

*Authority:* 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

**Subpart A—[AMENDED]**

■ 24. Amend § 1726.14 by revising the definition of “Approval of proposed construction” to read as follows:

**§ 1726.14 Definitions.**

\* \* \* \* \*

*Approval of proposed construction* means RUS approval of a construction work plan or other appropriate engineering study and RUS approval, for purposes of system financing, of the completion of all appropriate requirements of part 1970 of this chapter.

\* \* \* \* \*

■ 25. Revise § 1726.18 to read as follows:

**§ 1726.18 Pre-loan contracting.**

Borrowers must consult with RUS prior to entering into any contract for material, equipment, or construction if a construction work plan, loan, or loan guarantee for the proposed work has not been approved. While the RUS staff will work with the borrower in such circumstances, nothing contained in this part is to be construed as authorizing borrowers to enter into any contract before the availability of funds has been ascertained by the borrower and all the requirements of 7 CFR part 1970, “Environmental Policies and Procedures,” have been fulfilled.

**PART 1737—PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED TELECOMMUNICATIONS LOANS**

■ 26. The authority citation for part 1737 continues to read as follows:

*Authority:* 7 U.S.C. 901 *et seq.*, 1921 *et seq.*; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

**Subpart C—[AMENDED]**

■ 27. Amend § 1737.22 by revising paragraph (b)(4) to read as follows:

**§ 1737.22 Supplementary information.**

\* \* \* \* \*

(b) \* \* \*

(4) Environmental documentation in accordance with 7 CFR part 1970, “Environmental Policies and Procedures.”

\* \* \* \* \*

**Subpart E—[AMENDED]**

■ 28. Amend § 1737.41 by revising paragraph (b)(2)(iii) to read as follows:

**§ 1737.41 Procedure for obtaining approval.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iii) Evidence that the borrower has satisfied the applicable requirements of 7 CFR part 1970, “Environmental Policies and Procedures.”

\* \* \* \* \*

**Subpart J—[AMENDED]**

■ 29. Amend § 1737.90 by revising paragraph (a)(6) to read as follows:

**§ 1737.90 Loan approval requirements.**

(a) \* \* \*

(6) All environmental requirements must be met (see 7 CFR part 1970, “Environmental Policies and Procedures”).

\* \* \* \* \*

**PART 1738—RURAL BROADBAND ACCESS LOANS AND LOAN GUARANTEES**

■ 30. The authority citation for part 1738 continues to read as follows:

*Authority:* Pub. L. 107–171, 7 U.S.C. 901 *et seq.*

**Subpart D—[AMENDED]**

■ 31. Amend § 1738.156 by revising paragraph (a)(8) to read as follows:

**§ 1738.156 Other Federal requirements.**

\* \* \* \* \*

(a) \* \* \*

(8) 7 CFR part 1970, “Environmental Policies and Procedures.”

\* \* \* \* \*

**Subpart E—[AMENDED]**

■ 32. Amend § 1738.212 by revising paragraph (a)(9) to read as follows:

**§ 1738.212 Network design.**

(a) \* \* \*

(9) Environmental documentation prepared in accordance with 7 CFR part 1970, “Environmental Policies and Procedures”; and

\* \* \* \* \*

**Subpart F—[AMENDED]**

■ 33. Amend § 1738.252 by revising paragraph (a) to read as follows:

**§ 1738.252 Construction.**

(a) Construction paid for with broadband loan funds must comply with 7 CFR parts 1788 and 1970, RUS Bulletin 1738–2, and any other guidance from the Agency.

\* \* \* \* \*

**PART 1739—BROADBAND GRANT PROGRAM**

■ 34. The authority citation for part 1739 continues to read as follows:

*Authority:* Title III, Pub. L. 108–199, 118 Stat. 3.

**Subpart A—[AMENDED]**

■ 35. Amend § 1739.15 by revising paragraph (l)(8) to read as follows:

**§ 1739.15 Completed application.**

\* \* \* \* \*

(l) \* \* \*

(8) Environmental documentation developed in accordance with 7 CFR part 1970, “Environmental Policies and Procedures.”

\* \* \* \* \*

**PART 1740—PUBLIC TELEVISION STATION DIGITAL TRANSITION GRANT PROGRAM**

■ 36. The authority citation for part 1740 continues to read as follows:

*Authority:* Consolidated Appropriations Act, 2005; Title III: Rural Development Programs; Rural Utilities Service; Distance Learning, Telemedicine, and Broadband Program; Public Law 108–447.

**Subpart A—[AMENDED]**

■ 37. Amend § 1740.9 by revising paragraph (k) to read as follows:

**§ 1740.9 Grant application.**

\* \* \* \* \*

(k) *Environmental impact and historic preservation.* The applicant must

provide details of the digital transition's impact on the environment and historic preservation, and comply with 7 CFR part 1970, "Environmental Policies and Procedures." Submission of environmental documentation alone does not constitute compliance with 7 CFR part 1970.

#### **PART 1753—TELECOMMUNICATIONS SYSTEM CONSTRUCTION POLICIES AND PROCEDURES**

■ 38. The authority citation for part 1753 continues to read as follows:

*Authority:* 5 U.S.C. 501, 7 U.S.C. 901 *et seq.*

#### **Subpart D—[AMENDED]**

■ 39. Amend § 1753.25 by revising paragraph (f)(3) to read as follows:

##### **§ 1753.25 General.**

\* \* \* \* \*

(f) \* \* \*  
(3) 7 CFR part 1970, "Environmental Policies and Procedures," as well as with other laws, regulations, and Executive orders regarding environmental protection.

\* \* \* \* \*

#### **PART 1774—SPECIAL EVALUATION ASSISTANCE FOR RURAL COMMUNITIES AND HOUSEHOLDS PROGRAM (SEARCH)**

■ 40. The authority citation for part 1774 continues to read as follows:

*Authority:* 7 U.S.C. 1926(a)(2)(C).

#### **Subpart A—[AMENDED]**

■ 41. Revise § 1774.7 to read as follows:

##### **§ 1774.7 Environmental requirements.**

The policies and regulations contained in 7 CFR part 1970, "Environmental Policies and Procedures," apply to grants made in accordance with this part.

■ 42. Amend § 1774.8 by revising paragraph (d) to read as follows:

##### **§ 1774.8 Other Federal statutes.**

\* \* \* \* \*

(d) 7 CFR part 1970, "Environmental Policies and Procedures."

\* \* \* \* \*

#### **PART 1775—TECHNICAL ASSISTANCE GRANTS**

■ 43. The authority citation for part 1775 continues to read as follows:

*Authority:* 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

#### **Subpart A—[AMENDED]**

■ 44. Revise § 1775.7 to read as follows:

##### **§ 1775.7 Environmental requirements.**

The policies and regulations contained in 7 CFR part 1970, "Environmental Policies and Procedures," apply to grants made for the purposes in §§ 1775.36 and 1775.66.

■ 45. Amend § 1775.8 by revising paragraph (d) to read as follows:

##### **§ 1775.8 Other Federal statutes.**

\* \* \* \* \*

(d) 7 CFR part 1970, "Environmental Policies and Procedures."

\* \* \* \* \*

#### **PART 1779—WATER AND WASTE DISPOSAL PROGRAMS GUARANTEED LOANS**

■ 46. The authority citation for part 1779 continues to read as follows:

*Authority:* 5 U.S.C. 301, 7 U.S.C. 1989, 16 U.S.C. 1005.

■ 47. Amend § 1779.9 by revising the first sentence to read as follows:

##### **§ 1779.9 Environmental requirements.**

Facilities to be financed must undergo an environmental impact analysis in accordance with 7 CFR part 1970, "Environmental Policies and Procedures." \* \* \*

■ 48. Amend § 1779.52 by revising paragraph (b)(3) to read as follows:

##### **§ 1779.52 Processing.**

\* \* \* \* \*

(b) \* \* \*

(3) Environmental documentation in accordance with 7 CFR part 1970, "Environmental Policies and Procedures."

\* \* \* \* \*

#### **PART 1780—WATER AND WASTE LOANS AND GRANTS**

■ 49. The authority citation for part 1780 continues to read as follows:

*Authority:* 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

#### **Subpart B—[AMENDED]**

■ 50. Amend § 1780.31 by revising paragraph (e) to read as follows:

##### **§ 1780.31 General.**

\* \* \* \* \*

(e) During the earliest discussion with prospective applicants, the Agency will advise prospective applicants on environmental requirements and evaluation of potential environmental consequences of the proposal. Pursuant to 7 CFR part 1970, "Environmental Policies and Procedures," the environmental review requirements should be performed by the applicant simultaneously and concurrently with

the proposal's engineering planning and design.

■ 51. Amend § 1780.33 by revising paragraph (f) introductory text to read as follows:

##### **§ 1780.33 Application requirements.**

\* \* \* \* \*

(f) *Environmental documentation.*

The applicant must submit two copies of environmental documentation developed in accordance with 7 CFR part 1970, "Environmental Policies and Procedures."

\* \* \* \* \*

#### **Subpart C—[AMENDED]**

■ 52. Revise § 1780.55 to read as follows:

##### **§ 1780.55 Preliminary engineering reports and environmental documentation.**

Preliminary engineering reports (PERs) must conform to customary professional standards. PER guidelines for water, sanitary sewer, solid waste, and storm sewer are available from the Agency. Environmental documentation must be provided in accordance with 7 CFR part 1970, "Environmental Policies and Procedures."

#### **PART 1782—SERVICING OF WATER AND WASTE PROGRAMS**

■ 53. The authority citation for part 1782 continues to read as follows:

*Authority:* 5 U.S.C. 301; 7 U.S.C. 1981; 16 U.S.C. 1005.

■ 54. Revise § 1782.9 to read as follows:

##### **§ 1782.9 Environmental requirements.**

Servicing actions involving lease or sale of Agency-owned property will be reviewed for compliance with 7 CFR part 1970, "Environmental Policies and Procedures." The appropriate environmental review will be completed prior to approval of the servicing action.

#### **PART 1794—[REMOVED AND RESERVED]**

■ 55. Remove and reserve part 1794.

#### **CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS—COOPERATIVES SERVICE, RURAL UTILITIES SERVICE AND FARM SERVICE AGENCY**

#### **PART 1924—CONSTRUCTION AND REPAIR**

■ 56. The authority citation for part 1924 will continue to read as follows:

*Authority:* 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

■ 57. Revise § 1924.6 paragraph (a)(9) to read as the follows:

§ 1924.6 Performing development work.

\* \* \* \* \*

(a) \* \* \*

(9) Environmental requirements. The provisions of 7 CFR part 1970, "Environmental Policies and Procedures" will apply to all loans and grants including those being assisted under the HUD section 8 housing assistance payment program for new construction.

\* \* \* \* \*

Subpart A—[AMENDED]

■ 58. Amend Exhibit J to Subpart A of Part 1924, Part A, section II by revising the third paragraph to read as follows:

Exhibit J to Subpart A of Part 1924—Manufactured Home Sites, Rental Projects and Subdivisions: Development, Installation and Setup

\* \* \* \* \*

Part A \* \* \*  
II. \* \* \*

Part 7 CFR 1970, "Environmental Policies and Procedures" of this chapter applies on scattered sites, in subdivisions and rental projects to the development, installation and set-up of manufactured homes. To determine the level of environmental analysis required for a particular application, each manufactured home or lot involved will be considered as equivalent to one housing unit or lot. The implementation of Agency environmental policies and the consideration of important land use impacts are of particular relevance in the review of proposed manufactured home sites and in achieving the two purposes highlighted below. Because of the development, installation and set-up of manufactured home communities, including scattered sites, rental projects, and subdivisions, differ in some requirements from conventional site and subdivision development; two of the purposes of this exhibit are to:

\* \* \* \* \*

■ 59. Amend Exhibit J to Subpart A of Part 1924, Part A, section V by revising paragraph (B)(3) to read as follows:

Exhibit J to Subpart A of Part 1924—Manufactured Home Sites, Rental Projects and Subdivisions: Development, Installation and Setup

\* \* \* \* \*

Part A \* \* \*  
V. \* \* \*  
B. \* \* \*

3. 7 CFR part 1970, "Environmental Policies and Procedures."

\* \* \* \* \*

■ 60. Amend Exhibit J to Subpart A of Part 1924, Part B by revising paragraph (I)(C) to read as follows:

Exhibit J to Subpart A of Part 1924—Manufactured Home Sites, Rental Projects and Subdivisions: Development, Installation and Setup

\* \* \* \* \*

Part B \* \* \*  
I. \* \* \*

C. The finished grade elevation beneath the manufactured home or the first flood elevation of the habitable space, whichever is lower, must be above the 100-year return frequency flood elevation. This requirement applies wherever manufactured homes may be installed, not just in locations designated by the National Flood Insurance Program as areas of special flood hazards. The use of fill to accomplish this is a last resort. As is stated in EO 11988 and 7 CFR part 1970, "Environmental Policies and Procedures," it is the Agency's policy not to approve or fund any proposal in a 100-year floodplain area unless there is no practicable alternative to such a floodplain location.

\* \* \* \* \*

Subpart C—[AMENDED]

■ 61. Amend Exhibit C to Subpart C of Part 124 by revising paragraph (I)(A) to read as follows:

Exhibit C to Subpart C of Part 1924—Checklist of Visual Exhibits and Documentation for RRH, RCH and LH Proposals

\* \* \* \* \*

I. \* \* \*

A. Environmental Information. Documentation regarding the proposed project's environmental effects, in accordance with 7 CFR part 1970, "Environmental Policies and Procedures" as applicable. Guidance concerning assembly of the information is available at any Agency office or on the Agency's Web site.

\* \* \* \* \*

PART 1942—ASSOCIATIONS

■ 62. The authority citation for part 1942 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—[AMENDED]

■ 63. Amend § 1942.17 by revising paragraph (j)(7) to read as follows:

§ 1942.17 Community facilities.

\* \* \* \* \*

(j) \* \* \*

(7) Environmental requirements. Environmental requirements will be documented by the Agency in accordance with 7 CFR part 1970, "Environmental Policies and Procedures."

\* \* \* \* \*

■ 64. Amend § 1942.18 by revising paragraph (d)(1) to read as follows:

§ 1942.18 Community facilities—Planning, bidding, contracting, constructing.

\* \* \* \* \*

(d) \* \* \*

(1) Natural resources. Facility planning should be responsive to the owner's needs and should consider the long-term economic, social and environmental needs as set forth in this section. The Agency's environmental considerations are under 7 CFR part 1970, "Environmental Policies and Procedures."

\* \* \* \* \*

Subpart C—[AMENDED]

■ 65. Revise § 1942.105 to read as follows:

§ 1942.105 Environmental review.

The Agency must conduct and document an environmental review for each proposed project in accordance with 7 CFR part 1970, "Environmental Policies and Procedures." The review should be completed as soon as possible after receipt of an application. The loan approving official must determine an adequate environmental review has been completed before requesting an obligation of funds.

Subpart G—[AMENDED]

■ 66. Amend § 1942.310 by revising paragraph (b) to read as follows:

§ 1942.310 Other considerations.

\* \* \* \* \*

(b) Environmental requirements. The requirements of 7 CFR part 1970, "Environmental Policies and Procedures," apply to this subpart.

\* \* \* \* \*

PART 1944—HOUSING

■ 67. The authority citation for Part 1944 continues to read as follows:

Authority: 5 U.S.C 301; 42 U.S.C. 1480.

Subpart I—[AMENDED]

■ 68. Amend § 1944.410 by revising paragraphs (b)(1)(ii) and (c)(1) to read as follows:

§ 1944.410 Processing preapplications, applications, and completing grant docket.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) As appropriate, an original and one copy of environmental documentation as outlined in 7 CFR part 1970, Exhibit B-2, "Guidance to Applicants for Preparing Environment Reports" or Exhibit C-2, "Guidance to

Applicants for Preparing Environmental Assessments.”

\* \* \* \* \*

(c) *Form AD-622, “Notice of Preapplication Review Action.”* (1) If the applicant is eligible and after the State Director has returned the preapplication information and as appropriate, the an original and one copy of environmental documentation as outlined in 7 CFR part 1970, Exhibit B-2, “Guidance to Applicants for Preparing Environment Reports” or Exhibit C-2, “Guidance to Applicants for Preparing Environmental Assessments.” to the District Office, the District Director will, within 10 days, prepare and issue Form AD-622. The original Form AD-622 will be signed and delivered to the applicant along with the letter of conditions, a copy to the applicant’s case file, a copy to the County Supervisor, and a copy to the State Director.

\* \* \* \* \*

**Subpart K—[AMENDED]**

■ 69. Amend § 1944.526 by revising the heading and paragraphs (a)(5), (b)(1)(i), and (c)(1)(i) to read as follows:

**§ 1944.526 Preapplication procedures.**

(a) \* \* \*  
 (5) An original and one copy of environmental documentation specified in 7 CFR part 1970, “Environmental Policies and Procedures.”

(b) \* \* \*  
 (1) \* \* \*  
 (i) Complete any required environmental review procedures as specified in 7 CFR part 1970, “Environmental Policies and Procedures,” and attach to the application.

\* \* \* \* \*

(c) \* \* \*  
 (1) \* \* \*  
 (i) Make a determination regarding the appropriate level of environmental review in accordance with 7 CFR part 1970, “Environmental Policies and Procedures.”

\* \* \* \* \*

■ 70. Amend § 1944.531 by revising the heading, paragraph (c)(10), removing paragraph (c)(11), and redesignating paragraphs (c)(12) and (c)(13) as paragraphs (c)(11) and (c)(12) respectively, to read as follows:

**§ 1944.531 Application submission.**

\* \* \* \* \*

(c) \* \* \*  
 (10) Environmental documentation in accordance with 7 CFR part 1970, “Environmental Policies and Procedures.”

\* \* \* \* \*

■ 71. Amend Exhibit B to Subpart K of Part 1944 by revising paragraph (A)(4) to read as follows:

**EXHIBIT B TO SUBPART K OF PART 1944—ADMINISTRATIVE INSTRUCTIONS FOR STATE OFFICES REGARDING THEIR RESPONSIBILITIES IN THE ADMINISTRATION OF THE TECHNICAL AND SUPERVISORY ASSISTANCE GRANT PROGRAM**

A. \* \* \*

4. As appropriate, environmental documentation as outlined in 7 CFR part 1970, Exhibit B-2, “Guidance to Applicants for Preparing Environment Reports” or Exhibit C-2, “Guidance to Applicants for Preparing Environmental Assessments.”

\* \* \* \* \*

■ 72. Amend Exhibit C to Subpart K of Part 1944 by revising paragraph (A)(4) to read as follows:

**EXHIBIT C TO SUBPART K OF PART 1944—INSTRUCTIONS FOR DISTRICT OFFICES REGARDING THEIR RESPONSIBILITIES IN THE ADMINISTRATION OF THE TECHNICAL AND SUPERVISORY ASSISTANCE GRANT PROGRAM**

A. \* \* \*

4. As appropriate, environmental documentation as outlined in 7 CFR part 1970, Exhibit B-2, “Guidance to Applicants for Preparing Environment Reports” or Exhibit C-2, “Guidance to Applicants for Preparing Environmental Assessments.”

\* \* \* \* \*

**Subpart N—[AMENDED]**

■ 73. Revise § 1944.672 to read as follows:

**§ 1944.672 Environmental Requirements.**

Part 1970 of this chapter will be followed regarding environmental requirements. The approval of an HPG grant for the repair, rehabilitation, or replacement of dwellings shall be classified as a Categorical Exclusion, pursuant to § 1970.53. As part of their preapplication materials, applicants shall submit environmental documentation in accordance with 7 CFR part 1970, “Environmental Policies and Procedures,” for the geographical areas proposed to be served by the program. The applicant shall refer to Exhibit F-1 of this subpart (available in any Rural Development State or District Office) for guidance.

■ 74. Revise § 1944.676(c) to read as follows:

**§ 1944.676 Preapplication procedures.**

\* \* \* \* \*

(c) The application must submit as appropriate, an original and one copy of environmental documentation as outlined in 7 CFR part 1970, Exhibit B-2, “Guidance to Applicants for Preparing Environment Reports” or Exhibit C-2, “Guidance to Applicants for Preparing Environmental Assessments,” in accordance with exhibit F-1 of this subpart.

\* \* \* \* \*

**PART 1948—RURAL DEVELOPMENT**

**Subpart B—Section 601 Energy Impacted Area Development Assistance Program**

■ 75. The authority citation for part 1948, subpart B continues to read as follows:

**Authority:** Section 601, Pub. L. 95-620, delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70.

■ 76. Amend § 1948.84 by revising paragraphs (d)(8) and (i)(13), removing paragraph (i)(14), and redesignating paragraphs (i)(15), (i)(16), and (i)(17) as paragraphs (i)(14), (i)(15), and (i)(16) respectively, to read as follows:

**§ 1948.84 Application procedure for site development and acquisition grants.**

\* \* \* \* \*

(d) \* \* \*  
 (8) As appropriate, an original and one copy of environmental documentation as outlined in 7 CFR part 1970, Exhibit B-2, “Guidance to Applicants for Preparing Environment Reports” or Exhibit C-2, “Guidance to Applicants for Preparing Environmental Assessments.”

\* \* \* \* \*

(i) \* \* \*  
 (13) Environmental documentation in accordance with 7 CFR part 1970, “Environmental Policies and Procedures.”

\* \* \* \* \*

**PART 1951—SERVICING AND COLLECTIONS**

■ 77. The authority citation for part 1951 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

**Subpart R—[AMENDED]**

■ 78. Amend § 1951.872 by revising paragraph (b) to read as follows:

**§ 1951.872 Other regulatory requirements.**

\* \* \* \* \*

(b) *Environmental requirements.* (1) Unless specifically modified by this

section, the requirements of 7 CFR part 1970, "Environmental Policies and Procedures," apply to this subpart. Intermediaries and ultimate recipients of loans must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment.

(2) Environmental documentation will be provided in accordance with 7 CFR part 1970, "Environmental Policies and Procedures."

\* \* \* \* \*

**PART 1955—PROPERTY MANAGEMENT**

■ 79. The authority citation for part 1955 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

**Subpart B—[AMENDED]**

■ 80. Amend § 1955.63 by revising paragraph (b) to read as follows:

**§ 1955.63 Suitability determination.**

\* \* \* \* \*

(b) *Grouping and subdividing farm properties.* To the maximum extent practicable, the Agency will maximize the opportunity for beginning farmers and ranchers to purchase inventory properties. Farm properties may be subdivided or grouped according to § 1955.140, as feasible, to carry out the objectives of the applicable loan program. Properties may also be subdivided to facilitate the granting or selling of a conservation easement or the fee title transfer of portions of a property for conservation purposes. The environmental effects of such actions, in conjunction with farm loan programs, will be considered pursuant to subpart G of part 1940 of this chapter. For rural development program actions, environmental effects will be considered in accordance with 7 CFR part 1970, "Environmental Policies and Procedures."

\* \* \* \* \*

**Subpart C—[AMENDED]**

■ 81. Amend § 1955.136 by revising the heading and paragraphs (a) and (b) to read as follows:

**§ 1955.136 Environmental requirements.**

(a) Environmental impact analyses in accordance with 7 CFR part 1970 must be prepared prior to final decisions on disposal actions.

(b) All environmental impact analyses shall address the requirements of Departmental Regulation 9500–3, "Land Use Policy," in connection with the

conversion to other uses of prime and unique farmlands, farmlands of statewide or local importance, the alteration of wetlands or flood plains, or the creation of nonfarm uses beyond the boundaries of existing settlements.

\* \* \* \* \*

■ 82. Amend § 1955.137 by revising paragraph (a)(3)(i) to read as follows:

**§ 1955.137 Real property located in special areas or having special characteristics.**

(a) \* \* \*

(3) *Limitations placed on financial assistance.* (i) Financial assistance is limited to property located in areas where flood insurance is available. Flood insurance must be provided at closing of loans on program-eligible and non-program (NP)-ineligible terms. Appraisals of property in flood or mudslide hazard areas will reflect this condition and any restrictions on use. Financial assistance for substantial improvement or repair of property located in a flood or mudslide hazard area is subject to the limitations outlined, for farm loan program actions, in, paragraph 3b (1) and (2) of Exhibit C of subpart G of part 1940 of this chapter and for rural development program actions in 7 CFR part 1970, "Environmental Policies and Procedures."

\* \* \* \* \*

■ 83. Amend § 1955.140 by revising paragraph (a) to read as follows:

**§ 1955.140 Sale in parcels.**

(a) *Individual property subdivided.* An individual property, other than Farm Loan Programs property, may be offered for sale as a whole or subdivided into parcels as determined by the State Director. For MFH property, guidance will be requested from the National Office for all properties other than RHS projects. When farm inventory property is larger than a family-size farm, the county official will subdivide the property into one or more tracts to be sold in accordance with § 1955.107. Division of the land or separate sales of portions of the property, such as timber, growing crops, inventory for small business enterprises, buildings, facilities, and similar items may be permitted if a better total price for the property can be obtained in this manner. Environmental effects related to farm loan program actions should also be considered pursuant to subpart G of part 1940 of this chapter. For rural development program actions, environmental effects should be considered in accordance with 7 CFR part 1970, "Environmental Policies and Procedures."

\* \* \* \* \*

■ 84. Add part 1970 to read as follows:

**PART 1970—ENVIRONMENTAL POLICIES AND PROCEDURES**

**Subpart A—Environmental Policies**

- 1970.1 Purpose, applicability, and scope.
- 1970.2 [Reserved]
- 1970.3 Authority.
- 1970.4 Policies.
- 1970.5 Responsible parties.
- 1970.6 Definitions and acronyms.
- 1970.7 [Reserved]
- 1970.8 Actions requiring environmental review.
- 1970.9 Levels of environmental review.
- 1970.10 Raising the level of environmental review.
- 1970.11 Timing of the environmental review process.
- 1970.12 Limitations on actions during the NEPA process.
- 1970.13 Consideration of alternatives.
- 1970.14 Public involvement.
- 1970.15 Interagency cooperation.
- 1970.16 Mitigation.
- 1970.17 Programmatic analysis and tiering.
- 1970.18 Emergencies.
- 1970.19–1970.50 [Reserved]

**Subpart B—NEPA Categorical Exclusions**

- 1970.51 Applying CEs.
- 1970.52 Extraordinary circumstances.
- 1970.53 CEs involving no or minimal construction.
- 1970.54 CEs involving small-scale development.
- 1970.55 CEs for Multi-Tier Actions.
- 1970.56–1970.100 [Reserved]

**Subpart C—NEPA Environmental Assessments**

- 1970.101 General.
- 1970.102 Preparation of EAs.
- 1970.103 Supplementing EAs.
- 1970.104 Finding of No Significant Impact.
- 1970.105–1970.150 [Reserved]

**Subpart D—NEPA Environmental Impact Statements**

- 1970.151 General.
- 1970.152 EIS funding and professional services.
- 1970.153 Notice of intent and scoping.
- 1970.154 Preparation of the EIS.
- 1970.155 Supplementing EISs.
- 1970.156 Record of decision.
- 1970.157–1970.200 [Reserved]

Authority: 7 U.S.C. 6941 *et seq.*, 42 U.S.C. 4241 *et seq.*; 40 CFR parts 1500 through 1508; 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

**Subpart A—Environmental Policies**

**§ 1970.1 Purpose, applicability, and scope.**

(a) *Purpose.* The purpose of this part is to ensure that the Agency complies with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321, *et seq.*), and other applicable environmental requirements in order to make better decisions based on an understanding of the environmental consequences of proposed actions, and take actions that



protect, restore, and enhance the quality of the human environment.

(b) *Applicability.* This part contains the environmental policies and procedures applicable to programs administered by the Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), and Rural Utilities Service (RUS); herein referred to as “the Agency.”

(c) *Scope.* This part integrates NEPA with other planning, environmental review processes, and consultation procedures required by other Federal laws, regulations, and Executive Orders applicable to Agency programs. This part also supplements the Council on Environmental Quality (CEQ) regulations implementing the procedural provisions of NEPA, 40 CFR parts 1500 through 1508. To the extent appropriate, the Agency will also take into account CEQ guidance and memoranda. This part will also incorporate and comply with the procedures of Section 106 (36 CFR 800.8) of the National Historic Preservation Act (NHPA) and Section 7 (50 CFR part 402) of the Endangered Species Act (ESA).

#### § 1970.2 [Reserved]

#### § 1970.3 Authority.

This part derives its authority from a number of statutes, Executive orders, and regulations, including but not limited to those listed in this section. Both the Agency and the applicant, as appropriate, must comply with these statutes, Executive orders, and regulations, as well as any future statutes, Executive orders, and regulations that affect the Agency’s implementation of this part.

(a) National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*);

(b) Council on Environmental Quality Regulations Implementing the National Environmental Policy Act (40 CFR parts 1500 through 1508);

(c) U.S. Department of Agriculture, NEPA Policies and Procedures (7 CFR part 1b).

(d) Department of Agriculture, Enhancement, Protection and Management of the Cultural Environment (7 CFR parts 3100 through 3199);

(e) Archaeological and Historic Preservation Act of 1960, as amended, (16 U.S.C. 469 *et seq.*);

(f) Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa *et seq.*);

(g) Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*);

(h) Clean Air Act (42 U.S.C. 7401 *et seq.*);

(i) Clean Water Act (Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*);

(j) Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*);

(k) Coastal Barrier Improvement Act (42 U.S.C. 4028 *et seq.*);

(l) Coastal Zone Management Act (16 U.S.C. 1456);

(m) Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 103) (CERCLA);

(n) Consolidated Farm and Rural Development Act, Sections 307(a)(6)(A) (7 U.S.C. 1927(a)(6)(A)) and 363 (7 U.S.C. 2006e);

(o) Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*);

(p) Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*);

(q) Historic Sites, Buildings and Antiquities Act (16 U.S.C. 461 *et seq.*);

(r) Housing and Community Development Act of 1992 (42 U.S.C. 542(c)(9));

(s) Migratory Bird Treaty Act (16 U.S.C. 703–711);

(t) National Historic Preservation Act (16 U.S.C. 470 *et seq.*);

(u) National Trails System Act (16 U.S.C. 1241 *et seq.*);

(v) Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*);

(w) Noise Control Act (42 U.S.C. 4901 *et seq.*);

(x) Pollution Prevention Act of 1990 (42 U.S.C. 13101 *et seq.*);

(y) Resource Conservation and Recovery Act (42 U.S.C. 6901);

(z) Safe Drinking Water Act—(42 U.S.C. 300f *et seq.*);

(aa) Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*);

(bb) Wilderness Act (16 U.S.C. 1131 *et seq.*);

(cc) Compact of Free Association Between the United States and the Republic of the Marshall Islands and Between the United States and the Federated States of Micronesia (Public Law 108–188);

(dd) Compact of Free Association Between the United States and the Republic of Palau (Public Law 99–658);

(ee) Executive Order 11514, Protection and Enhancement of Environmental Quality;

(ff) Executive Order 11593, Protection and Enhancement of the Cultural Environment;

(gg) Executive Order 11988, Floodplain Management;

(hh) Executive Order 11990, Protection of Wetlands;

(ii) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations;

(jj) Executive Order 12372, Intergovernmental Review;

(kk) Executive Order 13112, Invasive Species;

(ll) Executive Order 13175, Consultation and Coordination with Indian Tribal Governments;

(mm) Executive Order 13186, Responsibilities of Federal Agencies to Protect Migratory Birds;

(nn) Executive Order 13287, Preserve America;

(oo) Executive Order 13016, Federal Support of Community Efforts along American Heritage Rivers;

(pp) Executive Order 13352, Facilitation of Cooperative Conservation;

(qq) Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management;

(rr) Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance;

(ss) Agriculture Departmental Regulation (DR) 5600–2, Environmental Justice;

(tt) Agriculture Departmental Regulation (DR) 9500–3, Land Use Policy;

(uu) Agriculture Departmental Regulation (DR) 9500–4, Fish and Wildlife Policy; and

(vv) Agriculture Departmental Manual (DM) 5600–001, Environmental Pollution Prevention, Control, and Abatement Manual.

#### § 1970.4 Policies.

(a) Applicants proposals must, whenever practicable, avoid or minimize adverse environmental impacts; avoid or minimize conversion of wetlands and important farmlands as defined in the Farmland Protection Policy Act and its implementing regulations issued by the USDA Natural Resources Conservation Service; avoid development in floodplains when practicable alternatives exist to meet developmental needs; and avoid or minimize potentially high and adverse impacts to minority or low-income populations within the proposed action’s area of impact. Avoiding development in floodplains includes avoiding development in the 500-year floodplain, as shown on the Federal Emergency Management Agency’s (FEMA) Flood Insurance Rate Maps, where the proposed actions and facilities are defined as critical actions in § 1970.6. There are no exceptions to this policy and the Agency shall not fund the proposal unless there is a demonstrated, significant need for the proposal and no practicable alternative exists to the proposed conversion of the above resources.

(b) The Agency encourages the reuse of real property defined as brownfields per Section 101 of CERCLA where the reuse of such property is complicated by the presence or potential presence of a hazardous substance, pollutant, or other contaminant, provided that the level of such does not threaten human health and the environment for the proposed land use. The Agency will defer to the agency with regulatory authority under the appropriate law in determining the appropriate level of contaminant for a specific proposed land use. The Agency will evaluate the risk based upon the applicable regulatory agency's review and concurrence with the proposal.

(c) The Agency and applicant will involve other Federal agencies with jurisdiction by law or special expertise, state and local governments, Indian tribes and Alaska Native organizations, Native Hawaiian organizations, and the public, early in the Agency's environmental review process to the fullest extent practicable. To accomplish this objective, the Agency and applicant will:

(1) Ensure that environmental amenities and values be given appropriate consideration in decision making along with economic and technical considerations;

(2) At the earliest possible time, advise interested parties of the Agency's environmental policies and procedures and required environmental impact analyses during early project planning and design; and

(3) Make environmental assessments (EA) and environmental impact statements (EIS) available to the public for review and comment in a timely manner.

(d) The Agency and applicant will ensure the completion of the environmental review process prior to the irreversible and irretrievable commitment of Agency resources in accordance with § 1970.11. The environmental review process is concluded when the Agency approves the applicability of a Categorical Exclusion (CE), issues a Finding of No Significant Impact (FONSI), or issues a Record of Decision (ROD).

(e) If an applicant's proposal does not comply with Agency environmental policies and procedures, further consideration of the application will be deferred until compliance can be demonstrated, or the application may be rejected. Any applicant that is directly and adversely affected by an administrative decision made by the Agency under this part may appeal that decision, to the extent permissible under 7 CFR part 11.

(f) The Agency recognizes the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, will lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of humankind's world environment in accordance with NEPA, 42 U.S.C. 4321 *et seq.*

(g) The Agency will use the NEPA process, to the maximum extent feasible, to identify and encourage opportunities to reduce greenhouse gas (GHG) emissions caused by proposed Federal actions that would otherwise result in the emission of substantial quantities of GHG.

#### § 1970.5 Responsible parties.

(a) *Agency.* The following paragraphs identify the general responsibilities of the Agency.

(1) The Agency is responsible for all environmental decisions and findings related to its actions and will encourage applicants to design proposals to protect, restore, and enhance the environment.

(2) If the Agency requires an applicant to submit environmental information, the Agency will outline the types of information and analyses required in guidance documents. The Agency will independently evaluate the information submitted.

(3) The Agency will advise applicants and applicable lenders of their responsibilities to consider environmental issues during early project planning and that specific actions listed in § 1970.12, such as initiation of construction, cannot occur prior to completion of the environmental review process or it could result in a denial of financial assistance.

(4) The Agency may act as either a lead agency or a cooperating agency in the preparation of an environmental review document. If the Agency is a cooperating agency, the Agency will fulfill the cooperating agency responsibilities outlined in 40 CFR 1501.6.

(5) Mitigation measures described in the environmental review documentation must be included as conditions in Agency financial commitment documents, such as a conditional commitment letter.

(6) The Agency, guaranteed lender, or multi-tier recipients will monitor and track the implementation, maintenance, and effectiveness of any required mitigation measures.

(b) *Applicants.* Applicants must:

(1) Consult with Agency staff to determine the appropriate level of environmental review and to obtain publicly available resources at the earliest possible time for guidance in identifying all relevant environmental issues that must be addressed and considered during early project planning and design throughout the process.

(2) Where appropriate, contact State and Federal agencies to initiate consultation on matters affected by this part. This part authorizes applicants to coordinate with State and Federal agencies on behalf of the Agency. However, applicants are not authorized to initiate consultation in accordance with Section 106 with Indian tribes on behalf of the Agency. In those cases, applicants need the express written authority of the Agency and consent of Indian tribes in order to initiate consultation.

(3) Provide information to the Agency that the Agency deems necessary to evaluate the proposal's potential environmental impacts and alternatives.

(i) Applicants must ensure that all required materials are current, sufficiently detailed and complete, and are submitted directly to the Agency office processing the application. Incomplete materials or delayed submittals may jeopardize consideration of the applicant's proposal by the Agency and may result in no award of financial assistance.

(ii) Applicants must clearly define the purpose and need for the proposal and inform the Agency promptly if any other Federal, State, or local agencies may be involved in financing, permitting, or approving the proposal, so that the Agency may coordinate and consider participation in joint environmental reviews.

(iii) As necessary, applicants must develop and document reasonable alternatives that meet their purpose and need while improving environmental outcomes.

(iv) Applicants must prepare environmental review documents according to the format and standards provided by the Agency. The Agency must independently evaluate the final documents submitted. All environmental review documents must be objective, complete, and accurate in order for them to be finally accepted by the Agency. Applicants may employ a design or environmental professional or technical service provider to assist them in the preparation of their environmental review documents.

(A) Applicants are not required to prepare environmental review documents for proposals that involve

limited, routine Agency activities listed in § 1970.53.

(B) For CEs listed in § 1970.54, applicants must prepare environmental documentation as required.

(C) When an EA is required, the applicant must prepare an EA that meets the requirements in subpart C of this part, including, but not limited to, information and data collection and public involvement activities. When the applicant prepares the EA, the Agency will make its own independent evaluation of the environmental issues and take responsibility for the scope and content of the EA.

(D) Applicants must cooperate with and assist the Agency in all aspects of preparing an EIS that meets the requirements specified in subpart D of this part, including, but not limited to, information and data collection and public involvement activities. Once authorized by the Agency in writing, applicants are responsible for funding all third-party contractors used to prepare the EIS.

(4) Applicants will provide any additional studies, data, or document revisions requested by the Agency during the environmental review and decision-making process. The studies, data, or documents required will vary depending upon the specific project and its impacts. Examples of studies that the Agency may require an applicant to provide are biological assessments under the ESA, archeological surveys under the NHPA, wetland delineations, surveys to determine the floodplain elevation on a site, air quality conformity analysis, or other such information needed to adequately assess impacts.

(5) Applicants will ensure that no actions are taken (such as any demolition, land clearing, initiation of construction, or advance of interim construction funds from a guaranteed lender), including incurring any obligations with respect to their proposal, that may have an adverse impact on the quality of the human environment or that may limit the choice of reasonable alternatives during the environmental review process. Limitations on actions by an applicant prior to the completion of the Agency environmental review process are defined in CEQ regulations at 40 CFR 1506.1 and 7 CFR 1970.12.

(6) Applicants will promptly notify the Agency processing official when changes are made to their proposal so that the environmental review and documentation may be supplemented or otherwise revised as necessary.

(7) Applicants will incorporate any mitigation measures identified and any

required monitoring in the environmental review process into the plans and specifications and construction contracts for the proposals. Applicants must provide such mitigation measures to consultants responsible for preparing design and construction documents, or provide other mitigation action plans. Applicants are required to maintain, as applicable, mitigation measures for the life of the loans or refund term for grants.

(8) Applicants will cooperate with the Agency on achieving environmental policy goals. If an applicant is unwilling to cooperate with the Agency on environmental compliance, the Agency will deny the requested financial assistance.

#### § 1970.6 Definitions and acronyms.

(a) *Definitions.* Terms used in this part are defined in 40 CFR part 1508, 36 CFR 800.16, and this section.

*Agency.* USDA Rural Development, which includes RHS, RBS, and RUS, and any successor agencies.

*Applicant.* An individual or entity requesting financial assistance including but not limited to loan recipients, grantees, guaranteed lenders, or licensees.

*Construction work plan.* An engineering planning study that is used in the Electric Program to determine and document a borrower's 2- to 4-year capital construction investments that are needed to provide and maintain adequate and reliable electric service to a borrower's new and existing members.

*Critical action.* Any activity for which even a slight chance of flooding would be hazardous as determined by the Agency. Critical actions include activities that create, maintain, or extend the useful life of structures or facilities that produce, use, or store highly volatile, flammable, explosive, toxic, or water-reactive materials; maintain irreplaceable records; or provide essential utility or emergency services (such as data storage centers, electric generating facilities, water treatment facilities, wastewater treatment facilities, large pump stations, emergency operations centers including fire and police stations, and roadways providing sole egress from flood-prone areas); or facilities that are likely to contain occupants who may not be sufficiently mobile to avoid death or serious injury in a flood.

*Design professionals.* Engineers or architects providing professional design services to applicants during the planning, design, and construction phases of proposals submitted to the Agency for financial assistance.

*Distributed resources.* Sources of electrical power that are not directly connected to a bulk power transmission system, having an installed capacity of not more than 10 Mega-volt-amperes (MVA), connected to an electric power system through a point of common coupling. Distributed resources include both generators (distributed generation) and energy storage technologies.

*Emergency.* A disaster or a situation that involves an immediate or imminent threat to public health or safety as determined by the Agency.

*Environmental review.* Any or all of the levels of environmental analysis described under this part.

*Financial assistance.* A loan, grant, or loan guarantee provided by the Agency to an applicant.

*Guaranteed lender.* The organization making, servicing, and/or collecting the loan which is guaranteed by the Agency under applicable regulations to the extent that such servicing and collecting has not been assigned to the Agency.

*Historic property.* Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria. (See 36 CFR 800.16(l)).

*Indian tribe.* An Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation or village corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. (See 36 CFR 800.16(m)).

*Loan-servicing actions.* All Agency actions on a particular loan after loan closing or, in the case of guaranteed loans, after the issuance of the loan guarantee, including but not limited to transfers, assumptions, consents, subordinations, foreclosures, and sales or leases of Agency-owned real property obtained through foreclosure.

*Loan/System designs.* Engineering studies to support a loan application and the determination that a system design provides telecommunication services most efficiently to proposed subscribers in a proposed service area, in accordance with the Telecommunications Program guidance.

*Multi-tier action.* Refers to specific programs administered by the Agency that provide financial assistance to eligible recipients, including but not limited to: Intermediaries; community-based organizations, such as housing or community development non-profit organizations; rural electric cooperatives; or other organizations with similar financial arrangements who, in turn, provide financial assistance available to eligible recipients. The entities or organizations receiving the initial Agency financial assistance are considered “primary recipients.” As the direct recipient of this financial assistance, “primary recipients” provide the financial assistance to other parties, referred to as “secondary recipients” or “ultimate recipients.” The multi-tier action programs include Housing Preservation Grants (42 U.S.C. 1490m), Multi-Family Housing Preservation Revolving Loan Fund (73 FR 48368), Intermediary Relending Program (7 U.S.C. 1932 note and 42 U.S.C. 9812), Rural Business Enterprise Grant Program (section 310B(c)(2) (Consolidated Farm and Rural Development Act)), Rural Economic Development Loan and Grant Program (7 U.S.C. 940c), Household Water Well System Grant Program (7 U.S.C. 1926e), and any other such programs so identified in the future through **Federal Register** notice.

*No action alternative.* An alternative that describes the reasonably foreseeable future environment in the event a proposed Federal action is not taken. This forms the baseline condition against which the impacts of the proposed action and other alternatives are compared and evaluated.

*Preliminary Architectural/Engineering Report.* Documents prepared by the applicant’s design professional in accordance with applicable Agency guidance for Preliminary Architectural Reports for housing, business, and community facilities proposals and for Preliminary Engineering Reports for water and wastewater proposals.

*Previously Disturbed or Developed Land.* Land that has been changed such that its functioning ecological processes have been and remain altered by human activity.

*Third-party contracts.* Refers to the preparation of EISs by contractors paid by the applicant. Under the Agency’s direction and in compliance with 40 CFR 1506.5(c), the applicant may undertake the necessary paperwork for the solicitation of a field of candidates. Federal procurement requirements do not apply to the Agency because it incurs no obligations or costs under the

contract, nor does the Agency procure anything under the contract.

(b) *Acronyms.*  
 CE—Categorical Exclusion  
 CERCLA—Comprehensive Environmental Response, Compensation, and Liability Act  
 CEQ—Council on Environmental Quality  
 EA—Environmental Assessment  
 EIS—Environmental Impact Statement  
 EPA—United States Environmental Protection Agency  
 ESA—Endangered Species Act  
 FEMA—Federal Emergency Management Agency  
 FONSI—Finding of No Significant Impact  
 GHG—Greenhouse Gas  
 kV—kilovolt (kV)  
 kW—kilowatt (kW)  
 MW—megawatt  
 MVA—Mega volt-amperes  
 NEPA—National Environmental Policy Act  
 NHPA—National Historic Preservation Act  
 NOI—Notice of Intent  
 RBIC—Rural Business Investment Companies  
 RBS—Rural Business-Cooperative Service  
 RHS—Rural Housing Service  
 RUS—Rural Utilities Service  
 ROD—Record of Decision  
 SCADA—Supervisory Control and Data Acquisition Systems  
 SEPA—State Environmental Policy Act  
 USDA—United States Department of Agriculture  
 USGS—United State Geological Survey  
 USEPA—United States Environmental Protection Agency

#### § 1970.7 [Reserved]

#### § 1970.8 Actions requiring environmental review.

(a) The Agency must comply with the requirements of NEPA for all major Federal actions within the:

(1) United States borders and any other commonwealth, territory or possession of the United States such as Guam, American Samoa, U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico; and  
 (2) Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Palau, subject to applicable Compacts of Free Association.

(b) Except as provided in paragraph (c) of this section, the Agency has determined the following to be major Federal actions:

(1) Financial assistance;  
 (2) Certain loan servicing actions with the potential to have an effect on the

environment, as determined by the Agency, including, but not limited to:

(i) Sale or lease of Agency-owned real property;

(ii) Any form of consent including a consent to the release of a lien or security interest (except when the debt to the Agency is being paid in full); or

(iii) Any request by a third party that the Agency accept the imposition of a lien or security interest of another creditor on assets previously pledged to the Agency;

(3) Promulgation of procedures or regulations for new or significantly revised programs; and

(4) Legislative proposals (see 40 CFR 1506.8).

(c) For environmental review purposes, the Agency has identified and established categories of proposed actions (§§ 1970.53 through 1970.55, 1970.101, and 1970.151). An applicant may propose to participate with other parties in the ownership of a project. In such a case, the Agency shall determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposed project prior to determining its classification. Where the applicant proposes to participate with other parties in the ownership of a proposed project and all applicants cumulatively own:

(1) Five percent (5%) or less, the project is not considered a Federal action subject to this part;

(2) Thirty-three and one-third percent (33⅓%) or more, the project shall be considered a federal action subject to this part;

(3) More than five percent (5%) but less than thirty-three and one-third percent (33⅓%), the Agency shall determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposal such that the Agency’s action will be considered a Federal action subject to this part. Consideration shall be given to such factors as:

(i) Whether construction would be completed regardless of the Agency’s financial assistance or approval;

(ii) The stage of planning and construction;

(iii) Total participation of the applicant;

(iv) Participation percentage of each participant; and

(v) Managerial arrangements and contractual provisions.

#### § 1970.9 Levels of environmental review.

(a) The Agency has identified classes of actions and the level of environmental review required for applicant proposals and Agency actions

in subparts B (CEs), C (EAs), and D (EISs) of this part. An applicant seeking financial assistance from the Agency must sufficiently describe its proposal so that the Agency can properly classify the proposal (i.e., determine the level of environmental review necessary).

(b) If an action is not identified in the classes of actions listed in subparts B, C, or D of this part, the Agency will determine what level of environmental review is appropriate.

(c) A single environmental document will evaluate an applicant's proposal and any other activities that are closely related, connected, interdependent, or likely to have significant cumulative effects. When a proposal represents one segment of a larger interdependent proposal being funded jointly by various entities, the level of environmental review will normally include the entire proposal.

(d) Upon submission of multi-year Telecommunication Program Loan/System Designs or multi-year Electric Program Construction Work Plans, the Agency will identify the appropriate classification for all proposals listed in the applicable design or work plan and may request any additional environmental information at or prior to the time of approval.

#### **§ 1970.10 Raising the level of environmental review.**

Environmental conditions, scientific controversy, or other characteristics unique to a specific proposal can trigger the need for a higher level of environmental review than described in subparts B or C of this part. When necessary, the Agency will determine whether extraordinary circumstances (see § 1970.52) or the potential for significant environmental impacts warrant a higher level of review. The Agency is solely responsible for determining the level of environmental review to be conducted and the adequacy of environmental review that has been performed.

#### **§ 1970.11 Timing of the environmental review process.**

(a) Once an applicant decides to request Agency financial assistance, the environmental review process must be initiated at the earliest possible time to ensure that planning, design, and other decisions reflect environmental policies and values, avoid delays, and minimize potential conflicts. This includes early coordination with the Agency, all funding partners, and regulatory agencies, in order to minimize duplication of effort.

(b) The environmental review process must be concluded before completion of the obligation of funds.

(c) The environmental review process is formally concluded when all of the following have occurred:

(1) The Agency has reviewed the appropriate environmental review document for completeness;

(2) All required public notices have been published and public comment periods have elapsed;

(3) All comments received during any established comment period have been considered and addressed appropriately by the Agency;

(4) The environmental review document has been approved by the Agency; and

(5) The appropriate environmental decision document has been executed by the Agency after § 1970.11(c)(1) through (4) have been concluded.

(d) For proposed actions listed in § 1970.151 and to ensure Agency compliance with the conflict of interest provisions in 40 CFR 1506.5(c), the Agency is responsible for selecting any third-party EIS contractor and participating in the EIS preparation. For more information regarding acquisition of professional services and funding of a third-party contractor, refer to § 1970.152.

#### **§ 1970.12 Limitations on actions during the NEPA process.**

(a) *Limitations on actions.* Applicants must not take actions concerning a proposal that may potentially have an environmental impact or would otherwise limit or affect the Agency's decision until the Agency's environmental review process is concluded. If such actions are taken, the Agency may deny the request for financial assistance.

(b) *Anticipatory demolition.* If the Agency determines that an applicant has intentionally significantly adversely affected a historic property with the intent to avoid the requirements of Section 106 of the NHPA (such as demolition or removal of all or part of the property) the Agency may deny the request for financial assistance in accordance with Section 110(k) of the NHPA.

(c) *Recent construction.* When construction is in progress or has recently been completed by applicants who can demonstrate no prior intent to seek Agency assistance at the time of application submittal to the Agency, the following requirements apply:

(1) In cases where construction commenced within 6 months prior to the date of application, the Agency will determine and document whether the

applicant initiated construction to avoid environmental compliance requirements. If any evidence to that effect exists, the Agency may deny the request for financial assistance.

(2) If there is no evidence that an applicant is attempting to avoid environmental compliance requirements, the application is subject to the following additional requirements:

(i) The Agency will promptly provide written notice to the applicant that the applicant must halt construction if it is ongoing and fulfill all environmental compliance responsibilities before the requested financing will be provided;

(ii) The applicant must take immediate steps to identify any environmental resources affected by the construction and protect the affected resources; and

(iii) With assistance from the applicant and to the extent practicable, the Agency will determine whether environmental resources have been adversely affected by any construction and this information will be included in the environmental document.

(d) *Minimal expenditures.* In accordance with 40 CFR 1506.1(d), nothing shall preclude the Agency from approving minimal expenditures by the applicant not affecting the environment (e.g., long lead-time equipment, purchase options, or environmental or technical documentation needed for Agency environmental review). To be minimal, the expenditure must not exceed the amount of loss which the applicant could absorb without jeopardizing the Government's security interest in the event the proposed action is not approved by the Agency, and must not compromise the objectivity of the Agency's environmental review process.

#### **§ 1970.13 Consideration of alternatives.**

The purpose of considering alternatives to a proposed action is to explore and evaluate whether there may be reasonable alternatives to that action that may have fewer or less significant negative environmental impacts. When considering whether the alternatives are reasonable, the Agency will take into account factors such as economic and technical feasibility. The extent of the analysis on each alternative will depend on the nature and complexity of the proposal. Environmental review documents must discuss the consideration of alternatives as follows:

(a) For proposals subject to subpart C of this part, the environmental effects of the "No Action" alternative must be evaluated. All EAs must evaluate other reasonable alternatives whenever the

proposal involves potential adverse effects to environmental resources.

(b) For proposals subject to subpart D of this part, the Agency will follow the requirements in 40 CFR part 1502.

#### § 1970.14 Public involvement.

(a) *Goal.* The goal of public involvement is to engage affected or interested parties and share information and solicit input regarding environmental impacts of proposals. This helps the Agency to better identify potential environmental impacts and mitigation measures and allows the public to review and comment on proposals under consideration by the Agency. The nature and extent of public involvement will depend upon the public interest and the complexity, sensitivity, and potential for significant environmental impacts of the proposal.

(b) *Responsibility to involve the public.* The Agency will require applicant assistance throughout the environmental review process, as appropriate, to involve the public as required under 40 CFR 1506.6. These activities may include, but are not limited to:

(1) Coordination with Federal, state, and local agencies; Federally recognized American Indian tribes; Alaska Native organizations; Native Hawaiian organizations; and the public;

(2) Providing meaningful opportunities for involvement of affected minority or low-income populations, which may include special outreach efforts, so that potential disproportionate effects on minority or low-income populations are reduced to the maximum extent practicable;

(3) Publication of notices;

(4) Organizing and conducting meetings; and

(5) Providing translators, posting information on electronic media, or any other additional means needed that will successfully inform the public.

(c) *Scoping.* In accordance with 40 CFR 1501.7, scoping is an early and open process to identify significant environmental issues deserving of study, de-emphasize insignificant issues, and determine the scope of the environmental review process.

(1) Public scoping meetings allow the public to obtain information about a proposal and to express their concerns directly to the parties involved and help determine what issues are to be addressed and what kinds of expertise, analysis, and consultation are needed. For proposals classified in §§ 1970.101 and 1970.151, scoping meetings may be required at the Agency's discretion. The Agency may require a scoping meeting

whenever the proposal has substantial controversy, scale, or complexity.

(2) If required, scoping meetings will be held at reasonable times, in accessible locations, and in the geographical area of the proposal at a location the Agency determines would best afford an opportunity for public involvement.

(3) When held, applicants must attend and participate in all scoping meetings. When requested by the Agency, the applicant must organize and arrange meeting locations, publish public notices, provide translation, provide for any equipment needs such as those needed to allow for remote participation, present information on their proposal, and fulfill any related activities.

(d) *Public notices.* (1) The Agency is responsible for meeting the public notice requirements in 40 CFR 1506.6, but will require the applicant to provide public notices of the availability of environmental documents and of public meetings so as to inform those persons and agencies who may be interested in or affected by an applicant's proposal. The Agency will provide applicants with guidance as to specific notice content, publication frequencies, and distribution requirements. Public notices issued by the Agency or the applicant must describe the nature, location, and extent of the applicant's proposal and the Agency's proposed action; notices must also indicate the availability and location of pertinent information.

(2) Notices generally must be published in a newspaper(s) of general circulation within the proposal's affected areas and other places as the Agency determines. The notice must be published in the non-classified section or a designated public notice section of the newspaper. If the affected area is largely non-English speaking or bilingual, the notice must be published in both English and non-English language newspapers serving the affected area, if both are available. The Agency will determine the use of other distribution methods for communicating information to affected individuals and communities if those are more likely to be effective.

(3) The number of times notices regarding EAs must be published is specified in § 1970.102(b)(6)(ii). Other distribution methods may be used in special circumstances when a newspaper notice is not available or is not adequate. Additional distribution methods may include, but are not limited to, direct public notices to adjacent property owners or occupants, mass mailings, radio broadcasts,

internet postings, posters, or some other combination of public announcements.

(4) Formal notices required for EIS-level proposals pursuant to 40 CFR part 1500 will be published by the Agency in the **Federal Register**.

(e) *Public availability.* Documents associated with the environmental review process will be made available to the public at convenient locations specified in public notices and, where appropriate, on the Agency's Web site. Environmental documents which are voluminous or contain hard-to-reproduce graphics or maps should be made available for viewing at one or more locations, such as an Agency field office, public library, or the applicant's place of business. Upon request, the Agency will promptly provide interested parties copies of environmental review documents without charge to the extent practicable, or at a fee that is not more than the cost of reproducing and shipping the copies.

(f) *Public comments.* All comments should be directed to the Agency. Comments received by applicants must be forwarded to the Agency in a timely manner. The Agency will assess and consider all comments received.

#### § 1970.15 Interagency cooperation.

In order to reduce delay and paperwork, the Agency will, when practicable, eliminate duplication of Federal, state, and local procedures by participating in joint environmental document preparation, adopting appropriate environmental documents prepared for or by other Federal agencies, and incorporating by reference other environmental documents in accordance with 40 CFR 1506.2 and 1506.3.

(a) *Coordination with other Federal agencies.* When other Federal agencies are involved in an Agency action listed in § 1970.101 or § 1970.151, the Agency will coordinate with these agencies to determine cooperating agency relationships as appropriate in the preparation of a joint environmental review document. The criteria for making this determination can be found at 40 CFR 1501.5.

(b) *Adoption of documents prepared for or by other Federal agencies.* The Agency may adopt EAs or EISs prepared for or by other Federal agencies if the proposed actions and site conditions addressed in the environmental document are substantially the same as those associated with the proposal being considered by the Agency. The Agency will consider age, location, and other reasonable factors in determining the usefulness of the other Federal documents. The Agency will complete

an independent evaluation of the environmental document to ensure it meets the requirements of this part. If any environmental document does not meet all Agency requirements, it will be supplemented prior to adoption. Where there is a conflict in the two agencies' classes of action, the Agency may adopt the document provided that it meets the Agency's requirements.

(c) *Cooperation with state and local governments.* In accordance with 40 CFR 1500.5 and 1506.2, the Agency shall cooperate with state and local agencies to the fullest extent possible to reduce delay and duplication between NEPA and comparable state and local requirements.

(1) *Joint environmental documents.* To the extent practicable, the Agency will participate in the preparation of a joint document to ensure that all of the requirements of this part are met. Applicants that request Agency assistance for specific proposals must contact the Agency at the earliest possible date to determine if joint environmental documents can be effectively prepared. In order to prepare joint documents the following conditions must be met:

(i) Applicants must also be seeking financial, technical, or other assistance such as permitting or approvals from a State or local agency that has responsibility to complete an environmental review for the applicant's proposal; and

(ii) The Agency and the State or local agency may agree to be joint lead agencies where practicable. When State laws or local ordinances have environmental requirements in addition to, but not in conflict with those of the Agency, the Agency will cooperate in fulfilling these requirements.

(2) *Incorporating other documents.* The Agency cannot adopt a non-Federal environmental document under NEPA. However, if an environmental document is not jointly prepared as described in paragraph (c)(1) of this section (e.g., prepared in accordance with a State environmental policy act [SEPA]), the Agency will evaluate the document as reference or supporting material for the Agency's environmental document.

#### **§ 1970.16 Mitigation.**

(a) The goal of mitigation is to avoid, minimize, rectify, reduce, or compensate for the adverse environmental impacts of an action. The Agency will seek to mitigate potential adverse environmental impacts resulting from Agency actions. All mitigation measures will be included in Agency commitment or decision documents.

(b) Mitigation measures, where necessary for a FONSI or, where applicable, ROD, will be discussed with the applicant and with any other relevant agency and, to the extent practicable, incorporated into Agency commitment documents, plans and specifications, and construction contracts so as to be legally binding.

(c) The Agency, applicable lenders, or any intermediaries will monitor implementation of all mitigation measures during development of design, final plans, inspections during the construction phase of projects, as well as in future servicing visits. The Agency will direct applicants to take necessary measures to bring the project into compliance. If the applicant fails to achieve compliance, all advancement of funds and the approval of cost reimbursements will be suspended. Other measures may be taken by the Agency to redress the failed mitigation as appropriate.

#### **§ 1970.17 Programmatic analyses and tiering.**

In accordance with 40 CFR 1502.20 and to foster better decision making, the Agency may consider preparing programmatic-level NEPA analyses and tiering to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review.

#### **§ 1970.18 Emergencies.**

When an emergency exists and the Agency determines that it is necessary to take emergency action before preparing a NEPA analysis and any required documentation, the following provisions apply:

(a) *Urgent response.* The Agency and the applicant, as appropriate, may take actions necessary to control the immediate impacts of an emergency. Emergency actions include those that are urgently needed to return damaged facilities to service and to mitigate harm to life, property, or important natural or cultural resources. When taking such actions, the Agency and the applicant, when applicable, will take into account the probable environmental consequences of the emergency action and mitigate foreseeable adverse environmental effects to the extent practicable.

(b) *CE- and EA-level actions.* If the Agency proposes longer-term emergency actions other than those actions described in paragraph (a) of this section, and such actions are not likely to have significant environmental impacts, the Agency will document that determination in a finding for a CE or

in a FONSI for an EA prepared in accordance with these regulations. If the Agency finds that the nature and scope of proposed emergency actions are such that they must be undertaken prior to preparing any NEPA analysis and documentation associated with a CE or EA, the Agency will identify alternative arrangements for compliance with this part with the appropriate agencies.

(1) Alternative arrangements for environmental compliance are limited to actions necessary to control the immediate impacts of the emergency.

(2) Alternative arrangements will, to the extent practicable, attempt to achieve the substantive requirements of this part.

(c) *EIS-level actions.* If the Agency proposes emergency actions other than those actions described in paragraphs (a) or (b) of this section and such actions are likely to have significant environmental impacts, then the Agency will consult with the CEQ about alternative arrangements in accordance with CEQ regulations at 40 CFR 1506.11 as soon as possible.

#### **§§ 1970.19–1970.50 [Reserved]**

### **Subpart B—NEPA Categorical Exclusions**

#### **§ 1970.51 Applying CEs.**

(a) The actions listed in §§ 1970.53 through 1970.55 are classes of actions that the Agency has determined do not individually or cumulatively have a significant effect on the human environment (referred to as “categorical exclusions” or CEs).

(1) Actions listed in § 1970.53 do not normally require applicants to submit environmental documentation with their applications. However, these applicants may be required to provide environmental information later at the Agency's request.

(2) Actions listed in § 1970.54 normally require the submission of environmental documentation by applicants to allow the Agency to determine whether extraordinary circumstances (as defined in § 1970.52(a)) exist. When the Agency determines that extraordinary circumstances exist, an EA or EIS, as appropriate, will be required and, in such instances, applicants may be required to provide additional environmental information later at the Agency's request.

(3) Actions listed in § 1970.55 relate to financial assistance whereby the applicant is a primary recipient of a multi-tier program providing financial assistance to secondary or ultimate recipients without specifying the use of

such funds for eligible actions at the time of initial application and approval. The decision to approve or fund such initial proposals has no discernible environmental effects and is therefore categorically excluded provided the primary recipient enters into certain agreements with the Agency for future reviews. The primary recipient is limited to making the Agency's financial assistance available to secondary recipients for the types of projects specified in the primary recipient's application. Second-tier funding of proposals to secondary or ultimate recipients will be screened for extraordinary circumstances by the primary recipient and monitored by the Agency. If the primary recipient determines that extraordinary circumstances exist on any second-tier proposal, it must be referred to the Agency for the appropriate level of review under this part in accordance with subparts C and D of this part.

(b) To find that a proposal is categorically excluded, the Agency must determine the following:

(1) The proposal fits within a class of actions that is listed in §§ 1970.53 through 1970.55;

(2) There are no extraordinary circumstances related to the proposal (see § 1970.52); and

(3) The proposal is not "connected" (see 40 CFR 1508.25(a)(1)) to other actions with potentially significant impacts, is not related to other proposed actions with cumulatively significant impacts (see 40 CFR 1508.25(a)(2)), and is not precluded by 40 CFR 1506.1.

(d) A proposal that consists of more than one categorically excluded action may be categorically excluded only if all components of the proposed action are eligible for a CE.

(e) If, at any time during the environmental review process, the Agency determines that the proposal does not meet the criteria listed in §§ 1970.53 through 1970.55, an EA or EIS, as appropriate, will be required.

(f) Failure to achieve compliance with this part will postpone further consideration of an applicant's proposal until such compliance is achieved or the applicant withdraws the proposal. If compliance is not achieved, the Agency will deny the request for financial assistance.

#### § 1970.52 Extraordinary circumstances.

(a) Extraordinary circumstances are unique situations presented by specific proposals, such as characteristics of the geographic area affected by the proposal, scientific controversy about the environmental effects of the proposal, uncertain effects or effects

involving unique or unknown risks, and unresolved conflicts concerning alternate uses of available resources within the meaning of Section 102(2)(E) of NEPA.

(b) Pursuant to §§ 1970.53 and 1970.54, the Agency will consider a proposal's potential to cause any significant adverse environmental effects to be an extraordinary circumstance. Significant adverse environmental effects that the Agency considers to be extraordinary circumstances include, but are not limited to:

(1) Any violation of applicable Federal, state, or local statutory, regulatory, permit, or Executive order requirements for environment, safety, and health.

(2) Siting, construction, or major expansion of Resource Conservation and Recovery Act permitted waste storage, disposal, recovery, or treatment facilities (including incinerators), even if the proposal includes categorically excluded waste storage, disposal, recovery, or treatment actions.

(3) Any proposal that is likely to cause uncontrolled or unpermitted releases of hazardous substances, pollutants, contaminants, or petroleum and natural gas products.

(4) An adverse effect on the following environmental resources:

(i) Historic properties;

(ii) Federally listed threatened or endangered species, critical habitat, Federally proposed or candidate species;

(iii) Wetlands (those actions that require an individual permit under the Clean Water Act, Section 404 regulations);

(iv) Floodplains (those actions that introduce fill or structures into a floodplain where Executive Order 11988 requires consideration of alternatives to avoid adverse effects and incompatible development in floodplains. Actions that do not adversely affect the hydrologic character of a floodplain, such as buried utility lines or subsurface pump stations, are not considered extraordinary circumstances);

(v) Areas having formal Federal or state designations such as wilderness areas, parks, or wildlife refuges; wild and scenic rivers; or marine sanctuaries;

(vi) Special sources of water (such as sole source aquifers, wellhead protection areas, and other water sources that are vital in a region);

(vii) Coastal barrier resources or, unless exempt, coastal zone management areas; and

(viii) Coral reefs.

(5) The existence of controversy based on effects to the human environment

brought to the Agency's attention by a Federal, tribal, state, or local government agency.

(c) In the presence of extraordinary circumstances, a normally excluded action will be the subject of an EA or an EIS, as appropriate, prepared in accordance with subparts C or D of this part, respectively.

#### § 1970.53 CEs involving no or minimal disturbance.

The CEs in this section are for proposals for financial assistance that involve no or minimal alterations in the physical environment and typically occur on previously disturbed land. These actions normally do not require an applicant to submit environmental documentation with the application. However, the Agency may request additional environmental documentation from the applicant at any time, specifically if the Agency determines that extraordinary circumstances may exist. The CEs in this section also include CEs for certain Agency actions.

(a) *Routine financial actions.* These CEs apply to the following routine financial actions:

(1) Refinancing of debt, provided that the applicant is not using refinancing as a means of avoiding compliance with environmental requirements.

(2) Financial assistance for the purchase, transfer, lease, or other acquisition of real property when no or minimal change in use is reasonably foreseeable. Rural Housing Site Loans are not eligible for this CE.

(i) Real property includes land and any existing permanent or affixed structures.

(ii) "No or minimal change in use is reasonably foreseeable" means no or only a small change in use, capacity, purpose, operation, or design is expected where the foreseeable type and magnitude of impacts would remain essentially the same.

(3) Financial assistance for the purchase, transfer, or lease of personal property or fixtures where no or minimal change in operations is reasonably foreseeable. These include:

(i) Approval of minimal expenditures not affecting the environment such as contracts for long lead-time equipment and purchase options by applicants under the terms of 40 CFR 1506.1(d) and 7 CFR 1970.12;

(ii) Acquisition of end-user equipment and programming for telecommunication distance learning;

(iii) Purchase, replacement, or installation of equipment necessary for the operation of an existing facility (such as Supervisory Control and Data



Acquisition Systems (SCADA), energy management or efficiency improvement systems, standby internal combustion electric generators, battery energy storage systems, and associated facilities for the primary purpose of providing emergency power);

(iv) Purchase of vehicles (such as those used in business, utility, community, or emergency services operations);

(v) Purchase of existing water rights where no associated construction is involved;

(vi) Purchase of livestock and essential farm equipment, including crop storing and drying equipment;

(vii) Purchase of stock in an existing enterprise to obtain an ownership interest in that enterprise.

(4) Financial assistance for operating (working) capital for an existing operation to support day-to-day expenses;

(5) Loan-servicing actions by the Agency after provision of financial assistance when such actions have no potential for significant adverse environmental impact because the actions would involve no or minimal construction or change in operations in the foreseeable future. These actions include, but are not limited to: Foreclosure, sale or lease of Agency-owned real property obtained through foreclosure, Agency consents or approvals under existing agreements, and other such servicing actions, if such actions will have no or minimal construction or change in current operations in the foreseeable future. If such actions involve more than minimal construction or change in operations in the foreseeable future, the Agency will classify the action according to this part and the appropriate level of environmental review will be conducted prior to the approval of such action. If such actions are not ripe for immediate review, the Agency will require that the applicant or the party seeking Agency consent, as applicable, complete a separate environmental review as soon as the plans are sufficiently ripe to determine if such construction or change in operations will be classified as a CE, EA, or EIS under this part;

(6) Rural Business Investment Program actions as follows:

(i) Non-leveraged program actions that include licensing by USDA of Rural Business Investment Companies (RBIC); or

(ii) Leveraged program actions that include licensing by USDA of RBIC and Federal financial assistance in the form of technical grants or guarantees of debentures of an RBIC, unless such Federal assistance is used to finance

construction or development of land; and

(7) Guarantees issued to the Federal Financing Bank by the Agency under Section 313A(a) of the Rural Electrification Act of 1936 for guaranteed underwriting loans.

(b) *Information gathering and technical assistance.* These CEs apply to financial assistance for:

(1) Information gathering, data analysis, document preparation, real estate appraisals, environmental site assessments, and information dissemination. Examples of these actions are:

(i) Information gathering such as research, literature surveys, inventories, and audits.

(ii) Data analysis such as computer modeling.

(iii) Document preparation such as strategic plans; conceptual designs; management, economic, planning, or feasibility studies; energy audits or assessments; environmental analyses; and survey and analyses of accounts and business practices.

(iv) Information dissemination such as document mailings, publication, and distribution; and classroom training and informational programs.

(2) Technical advice, training, planning assistance, and capacity building. Examples of these actions are:

(i) Technical advice, training, planning assistance such as guidance for cooperatives and self-help housing group planning.

(ii) Capacity building such as leadership training, strategic planning, and community development training.

(3) Site characterization, environmental testing, and monitoring where no significant alteration of existing ambient conditions would occur. This includes, but is not limited to, air, surface water, groundwater, wind, soil, or rock core sampling; installation of monitoring wells; installation of small-scale air, water, or weather monitoring equipment.

(c) *Minor construction proposals.* These CEs apply to financial assistance for:

(1) Minor amendments or revisions to previously approved projects provided such activities do not alter the purpose, operation, location, or design of the project as originally approved;

(2) Repair, upgrade, or replacement of equipment or fixtures in existing structures for such purposes as improving habitability, reconstruction, energy efficiency, or pollution prevention;

(3) Any internal modification or minimal external modification, restoration, renovation, maintenance,

and replacement in-kind to an existing facility or structure;

(4) Construction of or improvements to a single-family dwelling or a multi-family housing project serving up to four families, except when financing is provided through a Rural Housing Site loan;

(5) Siting, construction, and operation of new or additional water supply wells for residential, farm, or livestock use;

(6) Modifications of an existing water supply well to restore production in existing commercial well fields, if there would be no drawdown other than in the immediate vicinity of the pumping well, no resulting long-term decline of the water table, and no degradation of the aquifer from the replacement well;

(7) New utility service connections to individual users or construction of utility lines or associated components where the applicant has no control over the placement of the utility facilities;

(8) Conversion of land in agricultural production to pastureland or forests, or conversion of pastureland to forest;

(9) Land-clearing operations of no more than 15 acres, provided any amount of land involved in tree harvesting is to be conducted on a sustainable basis and according to a Federal, state, or other governmental unit approved forestry management plan; and

(10) Conversion of no more than 160 acres of pastureland to agricultural production.

(d) *Energy or telecommunication proposals.* These CEs apply to financial assistance for:

(1) Changes to existing telecommunication facilities or electric transmission lines that involve pole replacement or structural components only where either the same or substantially equivalent support structures at the approximate existing support structure locations are used;

(2) Phase or voltage conversions, reconducting, upgrading, or rebuilding of existing electric distribution lines or telecommunication facilities;

(3) Addition of telecommunication cables and related facilities to electric transmission and distribution structures;

(4) Siting, construction, and operation of small, ground source heat pump systems that would be located on previously disturbed land;

(5) Siting, construction, and operation of small solar electric projects or solar thermal projects to be installed on an existing structure with no expansion of the footprint of the existing structure;

(6) Siting, construction, and operation of small biomass projects, such as

animal waste anaerobic digesters or gasifiers, that would use feedstock produced on site (such as a farm where the site has been previously disturbed) and supply gas or electricity for the site's own energy needs with no or only incidental export of energy;

(7) Construction of small standby electric generating facilities of one average megawatt (MW) or less total capacity and associated facilities, for the purpose of providing emergency power for or startup of an existing facility;

(8) Additions or modifications to electric power transmission facilities that would not affect the environment beyond the previously developed facility area including, but not limited to, switchyard rock grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms; and

(9) Safety, environmental, or energy efficiency improvements within an existing electric generation facility, including addition, replacement, or upgrade of facility components (such as precipitator, baghouse, or scrubber installations), that do not result in a change to the design capacity or function of the facility and do not result in an increase in pollutant emissions, effluent discharges, or waste products.

(e) *Promulgation of rules or formal notices.* The promulgation of rules or formal notices for policies or programs which are administrative or financial procedures for implementing Agency assistance activities.

(f) *Agency proposals for legislation.* Agency proposals for legislation that have no potential for significant environmental impacts because they would allow for no or minimal construction or change in operations.

(g) *Administrative actions.* Agency procurement activities for goods and services; routine facility operations; personnel actions, including but not limited to, reduction in force or employee transfers resulting from workload adjustments, and reduced personnel or funding levels; and other such management actions related to the operation of the Agency.

#### § 1970.54 CEs involving small-scale development.

The CEs in this section are for proposals for financial assistance that require an applicant to submit environmental documentation with their application to facilitate Agency determination of extraordinary circumstances. At a minimum, this documentation will include a complete

description of all components of the applicant's proposal and any connected actions, including its specific location on detailed site plans as well as location maps equivalent to a U.S. Geological Survey (USGS) quad map; and information from authoritative sources acceptable to the Agency confirming the presence or absence of sensitive environmental resources in the area that could be affected by the applicant's proposal. The environmental documentation submitted must be accurate, complete, and capable of verification. The Agency may request additional information as needed to make an environmental determination. Failure to submit the required documentation will postpone further consideration of the applicant's proposal until the environmental documentation is submitted, or the Agency may deny the request for financial assistance. The Agency will review all additional documentation and determine if extraordinary circumstances exist. The Agency will also review such documentation and may determine that classification as an EA or an EIS is more appropriate than a CE classification.

(a) *Small-scale site-specific development.* These CEs apply to proposals where site development activities (including construction, expansion, repair, rehabilitation, or other improvements) for rural development purposes would impact not more than 10 acres of real property and would not cause a substantial increase in traffic. Examples of such purposes and activities are identified in paragraphs (a)(1) through (a)(9) of this section. This paragraph does not apply to new industrial proposals or new energy generation over 100 kilowatts (kW) (such as ethanol and biodiesel production facilities) or those classes of action listed in §§ 1970.53, 1970.101, or 1970.151.

(1) Multi-family housing.

(2) Business development.

(3) Community facilities such as municipal buildings, libraries, security services, fire protection, schools, and health and recreation facilities.

(4) Infrastructure to support utility systems such as water or wastewater facilities; headquarters, maintenance, equipment storage, or microwave facilities; and energy management systems. This does not include proposals that either create a new or relocate an existing discharge to or a withdrawal from surface or ground waters, or cause substantial increase in a withdrawal or discharge at an existing site.

(5) Installation of new, commercial-scale water supply wells and associated pipelines or water storage facilities that are required by a regulatory authority or standard engineering practice as a backup to existing production well(s) or as reserve for fire protection.

(6) Construction of telecommunications towers and associated facilities, if the towers and associated facilities are 450 feet or less in height and would not be in or visible from an area of documented scenic value.

(7) Repair, rehabilitation, or restoration of water control, flood control, or water impoundment facilities, such as dams, dikes, levees, detention reservoirs, and drainage ditches, with minimal change in use, size, capacity, purpose, operation, location, or design from the original facility.

(8) Installation or enlargement of irrigation facilities on an applicant's land, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate less than 80 acres.

(9) Replacement or restoration of irrigation facilities, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers, with no or minimal change in use, size, capacity, or location from the original facility(s).

(b) *Small-scale corridor development.* These CEs apply to financial assistance for:

(1) Construction or repair of roads, streets, and sidewalks, including related structures such as curbs, gutters, storm drains, and bridges, in an existing right-of-way with minimal change in use, size, capacity, purpose, or location from the original infrastructure;

(2) Improvement and expansion of existing water, waste water, and gas utility systems:

(i) Within one mile of currently served areas irrespective of the percent of increase in new capacity, or

(ii) Increasing capacity not more than 30 percent of the existing user population;

(3) Replacement of utility lines where road reconstruction undertaken by non-Agency applicants requires the relocation of lines either within or immediately adjacent to the new road easement or right-of-way;

(4) Construction of new distribution lines and associated facilities less than 69 kilovolts (kV); and

(5) Installation of telecommunications lines, cables, and related facilities.

(c) *Small-scale energy proposals.* These CEs apply to financial assistance for:

(1) Construction of electric power substations (including switching stations and support facilities) or modification of existing substations, switchyards, and support facilities;

(2) Construction of electric transmission lines 10 miles in length or less, but not for the integration of major new generation resources into a bulk transmission system;

(3) Reconstruction (upgrading or rebuilding) and/or minor relocation of existing electric transmission lines 20 miles in length or less to enhance environmental and land use values or to improve reliability or access. Such actions include relocations to avoid right-of-way encroachments, resolve conflict with property development, accommodate road/highway construction, allow for the construction of facilities such as canals and pipelines, or reduce existing impacts to environmentally sensitive areas;

(4) Repowering or uprating modifications or expansion of an existing unit(s) up to 50 average MW at electric generating facilities in order to maintain or improve the efficiency, capacity, or energy output of the facility. Any air emissions from such activities must be within the limits of an existing air permit;

(5) Installation of new generating units or replacement of existing generating units at an existing hydroelectric facility or dam which results in no change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(6) Installation of a heat recovery steam generator and steam turbine with a rating of 200 average MW or less on an existing electric generation site for the purpose of combined cycle operations. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(7) Construction of small electric generating facilities (except geothermal and solar electric projects), including those fueled with wind or biomass, capable of producing not more than 10 average MW. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(8) Geothermal electric projects developed on up to 10 acres of land and including installation of one geothermal well for the production of geothermal fluids for direct use application (such as space or water heating/cooling) or for power generation. All supporting facilities and new related electric

transmission lines 10 miles in length or less are included;

(9) Solar electric projects developed on up to 10 acres of land including all supporting facilities and new related electric transmission lines 10 miles in length or less;

(10) Distributed resources of any capacity located at or adjacent to an existing landfill site or wastewater treatment facility that is powered by refuse-derived fuel. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(11) Small conduit hydroelectric facilities having a total installed capacity of not more than 5 average MW using an existing conduit such as an irrigation ditch or a pipe into which a turbine would be placed for the purpose of electric generation. All supporting facilities and new related electric transmission lines 10 miles in length or less are included; and

(12) Modifications or enhancements to existing facilities or structures that would not substantially change the footprint or function of the facility or structure and that are undertaken for the purpose of improving energy efficiency, promoting pollution prevention, safety, reliability, or security. This includes, but is not limited to, retrofitting existing facilities to produce biofuels and replacing fossil fuels used to produce heat or power in biorefineries with renewable biomass. This also includes installation of fuel blender pumps and associated changes within an existing fuel facility.

#### **§ 1970.55 CEs for multi-tier actions.**

The CEs in this section apply solely to providing financial assistance to primary multi-tier recipients in multi-tier action programs.

(a) The Agency's approval of financial assistance to a primary recipient in a multi-tier action program is categorically excluded if the primary recipient agrees in writing to:

(1) Conduct a screening of all proposed uses of funds to determine whether each proposal that would be funded or financed falls within § 1970.53 or § 1970.54 as a categorical exclusion;

(2) Obtain sufficient information to make an evaluation of those proposals listed in § 1970.53 or § 1970.54 to determine if extraordinary circumstances (as described in § 1970.52) are present;

(3) Document and report its conclusions regarding the applicability of a CE in its official records for Agency verification; and

(4) Refer any proposals that do not meet the criteria listed in § 1970.53 or § 1970.54, or proposals that may have extraordinary circumstances (as described in § 1970.52) to the Agency.

(b) Compliance with this section will be determined in Agency compliance reviews and other required audits for all primary multi-tier recipients. Failure by a primary recipient to meet the requirements of this section will result in penalties that may include written warnings, withdrawal of Agency assistance, withdrawal of Agency authorizations, or suspension from participation in Agency programs.

(c) Nothing in this section is intended to delegate the Agency's responsibility for compliance with this part. The Agency will continue to maintain ultimate responsibility for and control over the NEPA process.

#### **§§ 1970.56–1970.100 [Reserved]**

### **Subpart C—NEPA Environmental Assessments**

#### **§ 1970.101 General.**

(a) An EA is a concise public document used by the Agency to determine whether to issue a FONSI or prepare an EIS, as specified in subpart D of this part. If, at any point during the preparation of an EA, it is determined that the proposal will have a potentially significant impact on the quality of the human environment, an EIS will be prepared.

(b) Unless otherwise determined by the Agency, EAs will be prepared for all "major federal actions" as described in 7 CFR 1970.8, unless such actions are categorically excluded, as determined under subpart B of this part, or require an EIS, as provided under subpart D of this part;

(c) Preparation of an EA will begin as soon as the Agency has determined the proper classification of the applicant's proposal. Applicants should consult as early as possible with the Agency to determine the environmental review requirements of their proposals. The EA must be prepared concurrently with the early planning and design phase of the proposal. The EA will not be considered complete until it is in compliance with this part.

(d) Failure to achieve compliance with this part will result in postponement of further consideration of the applicant's proposal until such compliance is achieved or the applicant withdraws the application. If compliance is not achieved, the Agency will deny the request for financial assistance.

**§ 1970.102 Preparation of EAs.**

The EA must focus on resources that might be affected and any environmental issues that are of public concern.

(a) The amount of information and level of analysis provided in the EA should be commensurate with the magnitude of the proposal's activities and its potential to affect the quality of the human environment, but must discuss the following:

(1) The purpose and need for the proposed action;

(2) The affected environment, including baseline conditions that may be impacted by the proposed action and alternatives;

(3) The environmental impacts of the proposed action including the No Action alternative, and, if a specific project element is likely to adversely affect a resource, at least one alternative to the proposed action;

(4) Any applicable environmental laws and Executive orders;

(5) Any required coordination undertaken with any Federal, state, or local agencies or Indian tribes regarding compliance with applicable laws and Executive orders;

(6) Mitigation measures considered, including those measures that must be adopted to ensure the action will not have significant impacts;

(7) Any documents incorporated by reference, if appropriate, including, information provided by the applicant for the proposed action; and

(8) A listing of persons and agencies consulted.

(b) The following describes the normal processing of an EA under this subpart:

(1) The Agency advises the applicant of its responsibilities as described in subpart A of this part. These responsibilities include preparation of the EA as discussed in § 1970.5(b)(3)(iv)(C).

(2) The applicant provides a detailed project description including connected actions.

(3) The Agency verifies that the applicant's proposal should be the subject of an EA under § 1970.101. In addition, the Agency identifies any unique environmental requirements associated with the applicant's proposal.

(4) The Agency or the applicant, as appropriate, coordinates with Federal, State, and local agencies with jurisdiction by law or special expertise; tribes; and interested parties during EA preparation.

(5) Upon receipt of the EA from the applicant, the Agency evaluates the completeness and accuracy of the

documentation. If necessary, the Agency will require the applicant to correct any deficiencies and resubmit the EA prior to its review.

(6) The Agency reviews the EA and supporting documentation to determine whether the environmental review is acceptable.

(i) If the Agency finds the EA unacceptable, the Agency will notify the applicant, as necessary, and work to resolve any outstanding issues.

(ii) If the Agency finds the EA acceptable, it will prepare or review a "Notice of Availability of the EA" and direct the applicant to publish the notice in local newspapers or through other distribution methods as approved by the Agency. The notice must be published for three consecutive issues in a daily newspaper, or 2 consecutive weeks in a weekly newspaper. If other distribution methods are approved, the Agency will identify equivalent requirements. The public review and comment period will begin on the day of the first publication date or equivalent if other distribution methods are used. A 14- to 30-day public review and comment period, as determined by the Agency, will be provided for all Agency EAs.

(7) After reviewing and evaluating all public comments, the Agency determines whether to modify the EA, prepare a FONSI, or prepare an EIS that conforms with subpart D of this part.

(8) If the Agency determines that a FONSI is appropriate, and after preparation of the FONSI, the Agency will prepare or review a public notice announcing the availability of the FONSI and direct the applicant to publish the public notice in a newspaper(s) of general circulation, as described in § 1970.14(d)(2). In such case, the applicant must obtain an "affidavit of publication" or other such proof from all publications (or equivalent verification if other media were used) and must submit the affidavits and verifications to the Agency.

**§ 1970.103 Supplementing EAs.**

If the applicant makes substantial changes to a proposal or if new relevant environmental information is brought to the attention of the Agency after the issuance of an EA or FONSI, supplementing an EA may be necessary. Depending on the nature of the changes, the EA will be supplemented by revising the applicable section(s) or by appending the information to address potential impacts not previously considered. If an EA is supplemented, public notification will be required in

accordance with § 1970.102(b)(7) and (8).

**§ 1970.104 Finding of No Significant Impact.**

The Agency may issue a FONSI or a revised FONSI only if the EA or supplemental EA supports the finding that the proposed action will not have a significant effect on the human environment. If the EA does not support a FONSI, the Agency will follow the requirements of subpart D of this part before taking action on the proposal.

(a) A FONSI must include:

(1) A summary of the supporting EA consisting of a brief description of the proposed action, the alternatives considered, and the proposal's impacts;

(2) A notation of any other EAs or EISs that are being or will be prepared and that are related to the EA;

(3) A brief discussion of why there would be no significant impacts;

(4) Any mitigation essential to finding that the impacts of the proposed action would not be significant;

(5) The date issued; and

(6) The signature of the appropriate Agency approval official.

(b) The Agency must ensure that the applicant has committed to any mitigation that is necessary to support a FONSI and possesses the authority and ability to fulfill those commitments. The Agency must ensure that mitigation, and, if appropriate, a mitigation plan that is necessary to support a FONSI, is made a condition of financial assistance.

(c) The Agency must make a FONSI available to the public as provided at 40 CFR 1501.4(e) and 1506.6.

(d) The Agency may revise a FONSI at any time provided that the revision is supported by an EA or a supplemental EA. A revised FONSI is subject to all provisions of this section.

**§§ 1970.105–1970.150 [Reserved]****Subpart D—NEPA Environmental Impact Statements****§ 1970.151 General.**

(a) The purpose of an EIS is to provide a full and fair discussion of significant environmental impacts and to inform the appropriate Agency decision maker and the public of reasonable alternatives to the applicant's proposal, the Agency's proposed action, and any measures that would avoid or minimize adverse impacts.

(b) Agency actions for which an EIS is required include, but are not limited to:

(1) Proposals for which an EA was initially prepared and that may result in significant impacts that cannot be mitigated;

(2) Siting, construction (or expansion), and decommissioning of major treatment, storage, and disposal facilities for hazardous wastes as designated in 40 CFR part 261;

(3) Proposals that change or convert the land use of an area greater than 640 contiguous acres;

(4) New electric generating facilities, other than gas-fired combustion turbines, of more than 50 average MW output, and all new associated electric transmission facilities;

(5) New mining operations when the applicant has effective control (i.e., applicant's dedicated mine or purchase of a substantial portion of the mining equipment); and

(6) Agency proposals for legislation that may have a significant environmental impact.

(c) Failure to achieve compliance with this part will result in the postponement of further consideration of the applicant's proposal until the Agency determines that such compliance has been achieved or the applicant withdraws the application. If compliance is not achieved, the Agency will deny the request for financial assistance.

#### **§ 1970.152 EIS funding and professional services.**

(a) *Funding for EISs.* Unless otherwise approved by the Agency, an applicant must fund an EIS and any supplemental documentation prepared in support of an applicant's proposal.

(b) *Acquisition of professional services.* The Agency will determine the appropriate procurement method for acquiring any environmental professional services for EISs. Environmental professional services may be acquired at the discretion of the Agency through the methods specified in 40 CFR 1506.5(c). In accordance with 40 CFR 1506.5(c) and to avoid any conflicts of interest, the Agency is responsible for selecting an EIS contractor and the applicant must not initiate the procurement of an EIS contractor without prior written approval from the Agency.

(b) *EIS scope and content.* The Agency will prepare the scope of work for the preparation of the EIS and will be responsible for the scope, content and development of the EIS prepared by the contractor(s) hired or selected by the Agency.

(c) *Agreement Outlining Party Roles and Responsibilities.* For each EIS, an agreement will be executed by the Agency, the applicant, and each third-party contractor, which describes each party's roles and responsibilities during the EIS process.

(d) *Disclosure statement.* A disclosure statement will be prepared by the Agency and executed by each EIS contractor. The disclosure statement will specify that the contractor has no financial or other interest in the outcome of the proposal.

#### **§ 1970.153 Notice of Intent and scoping.**

(a) *Notice of Intent.* The Agency will publish a Notice of Intent (NOI) in the **Federal Register** that an EIS will be prepared and, if public scoping meetings are required, the notice will be published at least 14 days prior to the public scoping meeting(s).

(1) The NOI will include a description of the following: The applicant's proposal and possible alternatives; the Agency's scoping process including plans for possible public scoping meetings with time and locations; background information if available; and contact information for Agency staff who can answer questions regarding the proposal and the EIS.

(2) The applicant must publish a notice similar to the NOI, as directed and approved by the Agency, in one or more newspapers of local circulation, or provide similar information through other distribution methods as approved by the Agency. If public scoping meetings are required, such notices must be published at least 14 days prior to each public scoping meeting. The applicant must obtain an "affidavit of publication" or other such proof from all publications (or equivalent verification if other distribution methods were used) and must submit them to the Agency to be made a part of the EIS's Administrative Record.

(b) *Scoping.* In addition to the Agency and applicant responsibilities for public involvement identified in § 1970.14 and as part of early planning for the proposal, the Agency and the applicant must invite affected Federal, State, and local agencies and tribes to inform them of the proposal and identify the permits and approvals that must be obtained and the administrative procedures that must be followed.

(c) *Significant issues.* For each scoping meeting held, the Agency will determine, as soon as practicable after the meeting, the significant issues to be analyzed in depth and identify and eliminate from detailed study the issues that are not significant, have been covered by prior environmental review, or are not determined to be reasonable alternatives.

#### **§ 1970.154 Preparation of the EIS.**

(a) The EIS will be prepared in accordance with the format outlined at 40 CFR 1502.10.

(b) The EIS will be prepared using an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts. The disciplines of the preparers will be appropriate to address the potential environmental impacts associated with the proposal. This can be accomplished both in the information collection stage and the analysis stage by communication and coordination with environmental experts such as those at universities; local, state, and Federal agencies; and Indian tribes.

(c) The Agency will file the draft and final EIS with the U.S. Environmental Protection Agency's (EPA) Office of Federal Activities.

(d) The Agency will publish in the **Federal Register** a Notice of Availability announcing that either the draft or final EIS is available for review and comment. The applicant must concurrently publish a similar announcement using one or more distribution methods as approved by the Agency in accordance with § 1970.14.

(e) Minimum public comment time periods are calculated from the date on which EPA's Notice of Availability is published in the **Federal Register**. The Agency has the discretion to extend any public review and comment period if warranted. Notification of any extensions will occur through the **Federal Register** and other media outlets.

(f) When comments are received on a draft EIS, the Agency will assess and consider comments both individually and collectively. With support from the third-party contractor and the applicant, the Agency will develop responses to the comments received. Possible responses to public comments include: Modifying the alternatives considered; negotiating with the applicant to modify or mitigate specific project elements of the original proposal; developing and evaluating alternatives not previously given serious consideration; supplementing or modifying the analysis; making factual corrections; or explaining why the comments do not warrant further response.

(g) If the final EIS requires only minor changes from the draft EIS, the Agency may document and incorporate such minor changes through errata sheets, insertion pages, or revised sections to be incorporated into the draft EIS. In such cases, the Agency will circulate such changes together with comments on the draft EIS, responses to comments, and other appropriate information as the final EIS. The Agency will not circulate the draft EIS again; although, if requested, a copy of the draft EIS may

be provided in a timely fashion to any interested party.

§ 1970.155 Supplementing EISs.

(a) A supplement to a draft or final EIS will be announced, prepared, and circulated in the same manner (exclusive of meetings held during the scoping process) as a draft and final EIS (see 7 CFR 1970.154). Supplements to a draft or final EIS will be prepared if:

(1) There are substantial changes in the proposed action that are relevant to environmental concerns; or

(2) Significant new circumstances or information pertaining to the proposal arise which are relevant to environmental concerns and the proposal or its impacts.

(b) The Agency will publish an NOI to prepare a supplement to a draft or final EIS.

(c) The Agency, at its discretion, may issue an information supplement to a final EIS where the Agency determines that the purposes of NEPA are furthered by doing so even though such supplement is not required by 40 CFR 1502.9(c)(1). The Agency and the applicant shall concurrently have separate notices of availability published. The notice requirements

shall be the same as for a final EIS and the information supplement shall be circulated in the same manner as a final EIS. The Agency shall take no final action on any proposed modification discussed in the information supplement until 30 days after the Agency's notice of availability or the applicant's notice is published, whichever occurs later.

§ 1970.156 Record of Decision.

(a) The ROD is a concise public record of the Agency's decision. The required information and format of the ROD will be consistent with 40 CFR 1505.2.

(b) Once a ROD has been executed by the Agency, the Agency will issue a Federal Register notice indicating its availability to the public.

(c) The ROD may be signed no sooner than 30 days after the publication of EPA's Notice of Availability of the final EIS in the Federal Register.

§§ 1970.157—1970.200 [Reserved]

PART 1980—GENERAL

■ 85. The authority citation for part 1980 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart E—[AMENDED]

■ 86. Revise § 1980.432 to read as follows:

§ 1980.432 Environmental requirements.

The environmental requirements of 7 CFR part 1970, "Environmental Policies and Procedures," apply to all financial assistance provided in accordance with this subpart.

■ 87. Amend § 1980.451 by revising paragraph (i)(3) to read as follows:

§ 1980.451 Filing and processing applications.

\* \* \* \* \*

(i) \* \* \*

(3) Environmental documentation in accordance with 7 CFR part 1970, "Environmental Policies and Procedures."

\* \* \* \* \*

■ 88. In § 1980.451, amend the table entitled "Description of Record or Form Number and Title" by removing the 11th, 12th, and 13th entries and add, in their place, the following entry:

§ 1980.451 Filing and processing applications.

\* \* \* \* \*

DESCRIPTION OF RECORD OR FORM NUMBER AND TITLE

Filing position

*	*	*	*	*	*	*	*
Environmental documentation in accordance with 7 CFR part 1970, "Environmental Policies and Procedures".	Environmental documentation for	Categorical Exclu-	Environmental File.	Environmental Assessment	or Environmental	Impact Statement.	
*	*	*	*	*	*	*	*

Chapter XXXV—Rural Housing Service

PART 3560—DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

■ 89. The authority citation for part 3560 continues to read as follows:

Authority: 42 U.S.C. 1480.

Subpart I—[AMENDED]

■ 90. Amend § 3560.406 by revising paragraph (d)(4) to read as follows:

§ 3560.406 MFH ownership transfers or sales.

\* \* \* \* \*

(d) \* \* \*

(4) Prior to Agency approval of an ownership transfer or sale, an environmental review in accordance with 7 CFR part 1970, "Environmental Policies and Procedures," must be conducted on all property related to the ownership transfer or sale. If contamination from hazardous

substances or petroleum products is found on the property, the finding must be disclosed to the Agency and the transferee or buyer and must be taken into consideration in the determination of the housing project's value.

\* \* \* \* \*

PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM

■ 91. The authority citation for part 3565 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart G—[AMENDED]

■ 92. Amend § 3565.303 by revising paragraph (b)(1) to read as follows:

§ 3565.303 Issuance of loan guarantee.

\* \* \* \* \*

(b) \* \* \*

(1) Completion by the Agency of an environmental review in accordance

with 7 CFR part 1970 or successor regulation.

\* \* \* \* \*

PART 3575—GENERAL

■ 93. The authority citation for part 3575 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989.

Subpart A—[AMENDED]

■ 94. Revise § 3575.9 to read as follows:

§ 3575.9 Environmental requirements.

Requirements for an environmental review or mitigation actions are contained in 7 CFR part 1970, "Environmental Policies and Procedures." The lender must assist the Agency to ensure that the lender's applicant complies with any mitigation measures required by the Agency's environmental review for the purpose of avoiding or reducing adverse

environmental impacts of construction or operation of the facility financed with the guaranteed loan. This assistance includes ensuring that the lender's applicant is to take no actions (for example, initiation of construction) or incur any obligations with respect to their proposed undertaking that would either limit the range of alternatives to be considered during the Agency's environmental review process or which would have an adverse effect on the environment. If construction is started prior to completion of the environmental review and the Agency is deprived of its opportunity to fulfill its obligation to comply with applicable environmental requirements, the application for financial assistance will be denied. Satisfactory completion of the environmental review process must occur prior to Agency approval of the applicant's request or any commitment of Agency resources.

**Chapter XLII—Rural Business—Cooperative Service, Rural Utilities Service**

**PART 4274—DIRECT AND INSURED LOANMAKING**

■ 95. The authority citation for part 4274 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

**Subpart D—[AMENDED]**

■ 96. Amend § 4274.337 by revising paragraph (b) to read as follows:

**§ 4274.337 Other regulatory requirements.**

(b) *Environmental requirements.* (1) Unless specifically modified by this section, the requirements of 7 CFR part 1970, "Environmental Policies and Procedures," apply to this subpart. Intermediaries and ultimate recipients must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment. Both the intermediaries and the ultimate recipients must cooperate and furnish such information and assistance as the Agency needs to make any of its environmental determinations.

(2) Environmental documentation will be provided in accordance with 7 CFR part 1970, "Environmental Policies and Procedures."

(3) For each proposed loan from an intermediary to an ultimate recipient using Agency IRP loan funds, the Agency will conclude the environmental review required by 7 CFR part 1970, "Environmental Policies and Procedures." The results of this review will be used by the Agency in

making its decision on concurrence in the proposed loan.

\* \* \* \* \*

■ 97. Amend § 4274.343 to revise paragraph (a)(3) to read as follows:

**§ 4274.343 Application.**

(a) \* \* \*

(3) Environmental documentation in accordance with 7 CFR part 1970, "Environmental Policies and Procedures;"

\* \* \* \* \*

■ 98. Amend § 4274.361 by revising paragraph (b)(2) to read as follows:

**§ 4274.361 Requests to make loans to ultimate recipients.**

\* \* \* \* \*

(b) \* \* \*

(2) Environmental documentation in accordance with 7 CFR part 1970, "Environmental Policies and Procedures."

\* \* \* \* \*

**PART 4279—GUARANTEED LOANMAKING**

■ 99. The authority citation for Part 4279 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1932(a); and 7 U.S.C. 1989.

**Subpart A—[AMENDED]**

■ 100. Amend § 4279.30 by revising paragraph (c) to read as follows:

**§ 4279.30 Lenders' functions and responsibilities.**

\* \* \* \* \*

(c) *Environmental responsibilities.* Lenders have a responsibility to become familiar with Federal environmental requirements; to consider, in consultation with the prospective borrower, the potential environmental impacts of their proposals at the earliest planning stages; and to develop proposals that minimize the potential to adversely impact the environment. Lenders must alert the Agency to any controversial environmental issues related to a proposed project or items that may require extensive environmental review. Lenders must help the borrower prepare environmental documentation in accordance with 7 CFR part 1970, "Environmental Policies and Procedures."

\* \* \* \* \*

**PART 4284—GRANTS**

■ 101. The authority citation for part 4284 continues to read in part as follows:

**Authority:** 5 U.S.C. 301 and 7 U.S.C. 1989.

\* \* \* \* \*

**Subpart A—[AMENDED]**

■ 102. Amend § 4284.16 by revising paragraph (a) to read as follows:

**§ 4284.16 Other considerations.**

(a) *Environmental review.* Provide environmental documentation in accordance with 7 CFR part 1970, "Environmental Policies and Procedures."

\* \* \* \* \*

**Subpart G—[AMENDED]**

■ 103. Amend § 4284.630 by revising paragraph (b) to read as follows:

**§ 4284.630 Other considerations.**

\* \* \* \* \*

(b) *Environmental review.* Provide environmental documentation in accordance with 7 CFR part 1970, "Environmental Policies and Procedures."

\* \* \* \* \*

**PART 4290—RURAL BUSINESS INVESTMENT COMPANY ("RBIC") PROGRAM**

■ 104. The authority citation for part 4290 continues to read as follows:

**Authority:** 7 U.S.C. 1989 and 2009cc *et seq.*

**Subpart M—[AMENDED]**

■ 105. Amend § 4290.1940 to revise paragraph (h) to read as follows:

**§ 4290.1940 Integration of this part with other regulations application to USDA's programs.**

\* \* \* \* \*

(h) *Environmental requirements.* To the extent applicable to this part, the Secretary will comply with 7 CFR part 1970, "Environmental Policies and Procedures." The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45.

\* \* \* \* \*

**§§ 1781.11 and 4279.165 [AMENDED]**

■ 106. Remove the words "subpart G of part 1940 of this title" and add, in their place, the words "7 CFR part 1970, "Environmental Policies and Procedures"" in the following places:

- a. 7 CFR 1781.11(g); and
- b. 7 CFR 4279.165(b).

**§§ 1924.6, 1940.968, 1942.2, 1942.126, 1944.66, 1944.523, 1944.526, 1948.62, 1948.84, 1951.210, 1955.10, 1955.66, 1962.30, and Exhibits I and J to Subpart A of Part 1924 [AMENDED]**

■ 107. Remove the words "subpart G of part 1940 of this chapter" and add, in

their place, the words ‘7 CFR part 1970, “Environmental Policies and Procedures,”’ in the following places:

- a. 7 CFR 1924.6(a)(9);
- b. 7 CFR part 1924, subpart A, Exhibit I, Section 300, Site Design, 301–1 General;
- c. 7 CFR part 1924, subpart A, Exhibit J, Part B, paragraph I.D.;
- d. 7 CFR part 1924, subpart A, Exhibit J, Part B, paragraph II.A.;
- e. 7 CFR 1940.968(h)(2);
- f. 7 CFR 1942.2(b);
- g. 7 CFR 1942.126(l)(6)(i)(E);
- h. 7 CFR 1944.66(c);
- i. 7 CFR 1944.523(b);
- j. 7 CFR 1944.526(b)(1)(i);
- k. 7 CFR 1948.62(a);
- l. 7 CFR 1948.84(e)(2);
- m. 7 CFR 1951.210;
- n. 7 CFR 1955.10;
- o. 7 CFR 1955.66 introductory text; and
- p. 7 CFR 1962.30(b)(5).

**§§ 1924.106, 3550.5, 3550.159, 3560.3, 3560.54, 3560.56, 3560.59, 3560.71, 3560.73, 3560.407, 3560.408, 3560.409, 3560.458, 3565.7, 3565.205, 3565.255, 3570.69, 4280.36, 4280.41, 4280.116, and 4280.131 [AMENDED]**

- 108. Remove the words “7 CFR part 1940, subpart G” and add, in their place, the words ‘7 CFR part 1970, “Environmental Policies and Procedures.”’ in the following places:
  - a. 7 CFR 1924.106(a) introductory text;
  - b. 7 CFR 3550.5(b);
  - c. 7 CFR 3550.159(c)(5);
  - d. 7 CFR 3560.3;
  - e. 7 CFR 3560.54(b)(4);
  - f. 7 CFR 3560.56(d)(7);
  - g. 7 CFR 3560.59;
  - h. 7 CFR 3560.71(b)(4);
  - i. 7 CFR 3560.73(e);

- j. 7 CFR 3560.407(a);
- k. 7 CFR 3560.408(a);
- l. 7 CFR 3560.409(a) introductory text;
- m. 7 CFR 3560.458(d);
- n. 7 CFR 3565.7;
- o. 7 CFR 3565.205(b);
- p. 7 CFR 3565.255;
- q. 7 CFR 3570.69;
- r. 7 CFR 4280.36(k);
- s. 7 CFR 4280.41(b);
- t. 7 CFR 4280.116(a)(2); and
- u. 7 CFR 4280.131(c).

**Appendix A to Subpart B of Part 480 and Appendix B to Subpart B of Part 480 [AMENDED]**

- 109. Remove the words “Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, “Request for Environmental Information,” and in compliance with 7 CFR part 1940, subpart G of this title” and add, in their place, the words “Provide environmental information in accordance with part 1970 of this title” in the following places:
  - a. 7 CFR part 4280, App A, Sec 1, paragraph (b)(3);
  - b. 7 CFR part 4280, App A, Sec 2, paragraph (b)(3);
  - c. 7 CFR part 4280, App A, Sec 3, paragraph (b)(3);
  - d. 7 CFR part 4280, App A, Sec 4, paragraph (b)(2);
  - e. 7 CFR part 4280, App A, Sec 5, paragraph (b)(3);
  - f. 7 CFR part 4280, App A, Sec 6, paragraph (b)(3);
  - g. 7 CFR part 4280, App A, Sec 7, paragraph (b)(3);
  - h. 7 CFR part 4280, App A, Sec 8, paragraph (b)(3);
  - i. 7 CFR part 4280, App A, Sec 9, paragraph (b)(3);

- j. 7 CFR part 4280, App A, Sec 10, paragraph (b)(2);
- k. 7 CFR part 4280, App B, Sec 1, paragraph (b)(7);
- l. 7 CFR part 4280, App B, Sec 2, paragraph (b)(7);
- m. 7 CFR part 4280, App B, Sec 3, paragraph (b)(6);
- n. 7 CFR part 4280, App B, Sec 4, paragraph (b)(6);
- o. 7 CFR part 4280, App B, Sec 5, paragraph (b)(7);
- p. 7 CFR part 4280, App B, Sec 6, paragraph (b)(4);
- q. 7 CFR part 4280, App B, Sec 7, paragraph (b)(4);
- r. 7 CFR part 4280, App B, Sec 8, paragraph (b)(4);
- s. 7 CFR part 4280, App B, Sec 9, paragraph (b)(5); and
- t. 7 CFR part 4280, App B, Sec 10, paragraph (b)(3).

**§§ 1924.106, 1980.316, 1980.318 and Exhibit J to Subpart A of Part 1924 [AMENDED]**

- 110. Remove the words “subpart G of part 1940” and add, in their place, the words “7 CFR part 1970, “Environmental Policies and Procedures,”’ in the following places:
  - a. 7 CFR 1924.106(a)(2);
  - b. 7 CFR part 1924, subpart A, Exhibit J, Part B, paragraph III.A.;
  - c. 7 CFR 1980.316; and
  - d. 7 CFR 1980.318(a)(3).

Dated: December 19, 2013.

**Douglas J. O'Brien,**

*Deputy Under Secretary, Rural Development.*

Dated: December 23, 2013.

**Darci L. Vetter,**

*Acting Under Secretary, Farm and Foreign Agricultural Services.*

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